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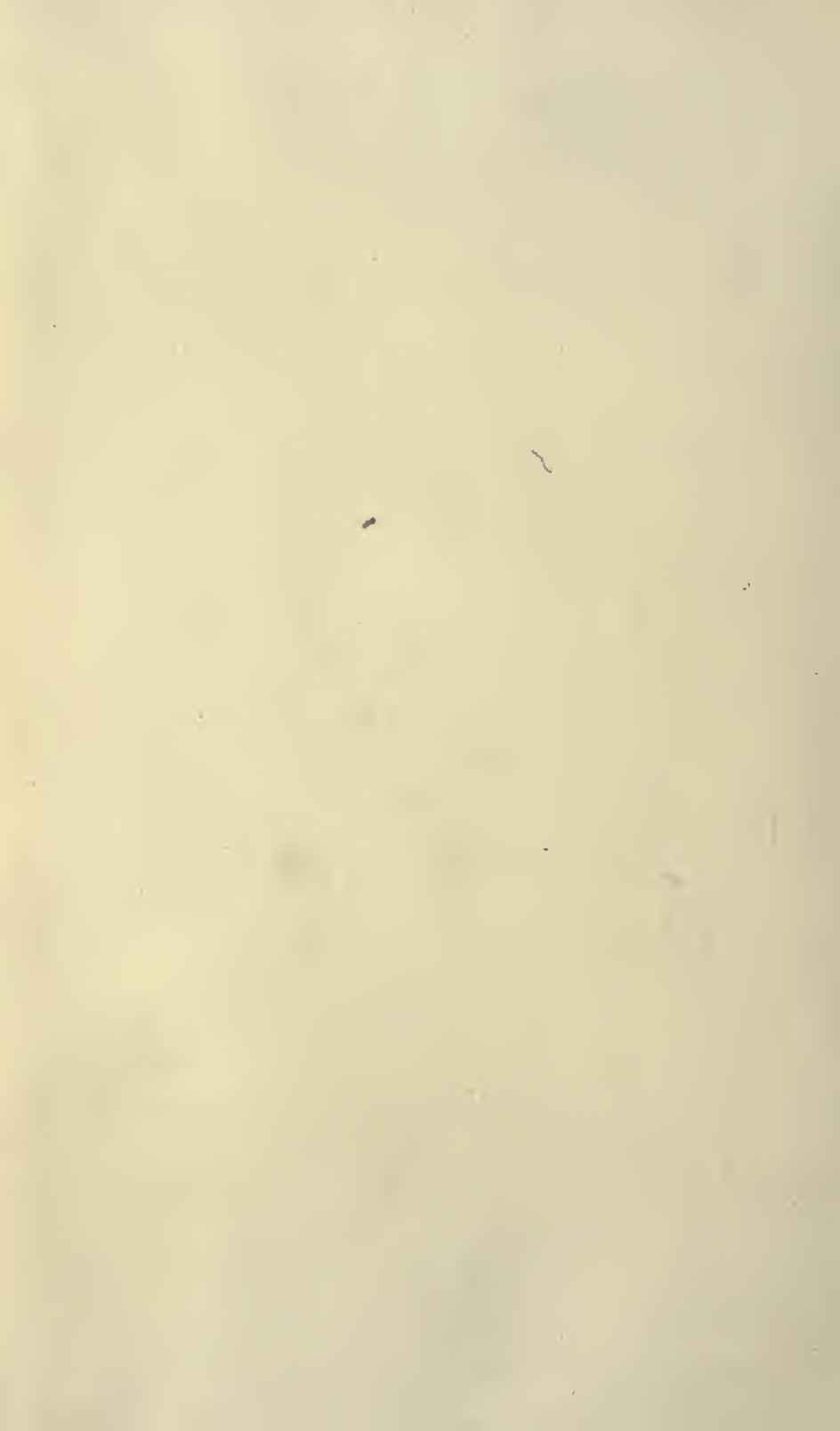
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BENDER'S

WAR REVENUE LAW

1914.

AN ACT TO INCREASE THE INTERNAL REVENUE,
AND FOR OTHER PURPOSES

Approved October 22, 1914

ANNOTATED

WITH REFERENCE TO EARLIER ACTS AND
TO OTHER EXTANT LAWS

TABLE OF CASES, INDEX, ETC.

BY THE PUBLISHER'S EDITORIAL STAFF.



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MATTHEW BENDER & CO.

1914

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William Boyd Printing Co., Albany, N. Y.

PREFACE.

EXCUSE IF NOT JUSTIFICATION

“The War Revenue Act has been especially productive of doubtful questions.”—Report of Atty. Gen., 1898, p. iii.

According to the latest official record, based upon the figures of the Department of Justice, there were 4,431 cases on Internal Revenue Law pending in the Federal courts. (Report of Commissioner for 1913, p. 18.)

The new Act repeals nothing and adds or revives much statute law—much of the very sort of thing in the way of hasty legislation which makes for litigation, as well as administrative difficulty.

[iii]

TABLE OF CONTENTS.

	PAGE
Preface.	iii
Introductory, Historical and General.	vii
Table of U. S. Internal Revenue Statutes.	xv
Other Internal Revenue Taxes in force.	xxi
Act of October 22, 1914.	1-124
Beer, etc.	1, 2
Wines, etc.	4, 16
Special taxes	18, 22, 45
Tobacco mfrs., etc.	39, 43
Adhesive stamps	46
Schedule A., documentary stamps.	80, 89
Schedule B., mercantile stamps.	71, 106
Other laws made applicable.	110
Assessment and collection	111
Penalties.	114
Protest and reclamation.	117
Construction of laws	119
Taking effect	124
Biographical Notes	129
Table of Taxes.	135
Table of Cases.	143
Condensed catch line index to the Act.	161
Index.	167

INTRODUCTORY AND GENERAL.

The Internal Revenue Act of 1914, Act of October 22, 1914, will doubtless commonly be referred to as a War Tax, although it is not technically such by its title. It is rather a rule-of-thumb expedient for raising needed money than a carefully devised instrument of scientific finance. The very use of the word "war," in and out of Congress, implies that, whereas under normal conditions other sources of revenue, such as the tariff, are preferable, a state of war may so reduce foreign trade and customs duties as to necessitate a resort to additional internal revenue measures. We experienced this in 1813, in 1861, in 1898, and now again (though the present war is not our own), in 1914.

In a sense, excise and stamp taxes are more burdensome and annoying than tariff duties; and memories and traditions of abuses incident to crude, primitive excise systems partly explain this feeling.¹

1. Even in Hamilton's day the opposition to excise was more traditional than rational. There was, perhaps, an economic explanation of the Whisky Rebellion and some other forms of opposition. We now smile, however, at the talk in the early Congress about internal revenue taxes *per se* being, "the horror of all free states" . . . "hostile to the liberties of the peo-

ple" . . . "would convulse the government; let loose a swarm of harpies who, under the denomination of revenue officers, will range the country, prying into everyman's house and affairs, and, like the Macedonian phalanx, bear down all before them" . . . "grog, a necessary article of drink" . . . "a shirt shall not be washed without an excise," etc. It has

They are, therefore, later applied in times of need, and earlier abandoned when the financial stress is relaxed. Yet they fall, for the most part, upon things which are not vital necessities, and they are in fact rather irritating to the prosperous than burdensome to the poor.

The Federal Government long ago learned the value of such taxes as the most readily available means of supplying an extraordinary need in an emergency.¹ And, while we are as yet spared the necessity of taxing nearly everything nearly all the time, as is true of some other lands, our people are now familiar with the system and fairly persuaded of its usefulness. The general scheme has been permanently established since 1862 and furnishes the administrative means of collecting an increased revenue in any emergency. It is clearly a good thing to have, and the people will not object, if it is not used too much. The extended schedules² of the civil war period, which produced four times as much revenue in a single year as the tariff, were

always been the way of politicians to call a soap tax a "tax on cleanliness," and a paper tax a "tax on knowledge." The Congressional debates on the present Act, aside from a sensational effort to complicate the matter by admixing the bad "cotton situation," turned largely on the partisan political significance of adopting one rather than another of the available means of obtaining needed public funds.

1. "The excise was part of the system by which Hamilton

sought to re-enforce the import duties and to prepare the way for collecting a revenue in time of war, when the usual sources of taxation should become dry." Bolles, *Financial History of the U. S.*, 1789-1860, p. 124.

2. The revenue measures of the civil war period were so complex that Congress was sometimes driven to passing a special appropriation to cover the preparation of an index for the use of members. 15 Stat. 237.

rapidly narrowed until the generation of the Spanish war was almost surprised to learn that internal revenue might be made to include other items than liquors and tobacco. The War Tax of 1898 was essentially an adoption and rough adaptation of some of the features of earlier acts. It served its purpose and was, for the most part, repealed in 1902. Congress, facing a new crisis, induced or at least threatened by a general war in Europe, has evidently and correctly concluded that the American people no longer consider reasonable internal taxes "infernal."

In each instance of the passage of such a measure it has been promised to be temporary, and in each instance the promise has been kept. The present Act itself fixes December 31, 1915, as the date when the emergency taxes shall cease. They will be acquiesced in, if for no better reason than a dread of possible alternatives of greater probable oppressiveness.¹

Our so-called war taxes certainly do not "beat the Dutch." The whole scheme, as a system, had

1. It is interesting to note that, as long ago as 1888, the present executive, Woodrow Wilson, wrote as follows: "The people ought to be made to feel their fiscal policy all the time; otherwise they will never give regular or adequate heed to it. And there would seem to be no room for doubt that the country feels the whiskey and tobacco license tax much more than it feels the duties on imports. It

shows consciousness of the one, habitual unconsciousness of the other. These license taxes, then, are the best indirect taxes that can be laid, for a double reason; they are taxes which the people—or at any rate a . . . part of the people feel that they are paying; and they fall upon articles of luxury, not upon articles of necessity." *The National Revenues*, edited by Albert Shaw, 1888, p. 109.

its origin in Holland, where the powerful merchants, to lighten the burden of direct taxes on their own capital, devised methods of indirect taxation or excise as the best means of scattering the weight. The Stamp Tax adopted in 1624 is said to have been the winner of a prize contest which was publicly advertised as a method of accelerating inventive genius in the field of finance. The civil wars induced England to try some features of the excise plan, and a general stamp tax was imposed in 1694. The Stamp Act of 1765 helped to precipitate the American Revolution. And several of the early English Acts are of interest, in that our legislators have naturally looked first to them for practical precedents. But, as revenue enactments neither involve nor illustrate many scientific principles, either of law or of economics, there is little to be gained for our present purposes by examining foreign analogies.

The Act of 1914 is so substantially a re-enactment, though with many omissions, additions and alterations, of the Act of 1898; and this emergency legislation is to such extent a thing apart from the main and relatively permanent body of internal revenue law, that it will best and most promptly serve the needs of the legal profession and the public to have a manual specifically devoted to these temporary measures, with appropriate reference to the permanent system, which has its own literature, and to the Act of 1898. The present book covers more particularly the special or license taxes, the stamp tax and other features of the emergency legislation, with

references to the general provisions which are applicable from the Revised Statutes and other laws. The "world situation" is such that, as was intimated in the congressional debates on the Act, not only may these emergency taxes be extended, but further features of earlier excise legislation may have to be revived. In view of this, as well as because it is generally illustrative, some of the relevant older material is retained in this book in a condensed form.

There should be less uncertainty in applying the new law than in 1898, even where points in question have not been judicially passed upon. For there is now available a mass of relatively recent interpretation which took definite shape after the initial confusion of re-applying (1898) a system long unused. A great many matters have been through the courts, and even the administrative precedents under the Act of 1898 will doubtless be generally followed by the department as to the re-enacted and analogous provisions.

Although departmental rulings¹ do not bind, nor

1. The Commissioner's rulings, in correspondence with inquirers or collectors, or in special or general circulars, are printed in the periodic publication of Treasury Decisions. To make these rulings, or such of them as continue in force, more accessible and convenient, the Department from time to time issues general circulars and even fuller compilations. Three volumes of Compilations of Decisions under the

Act of 1898 were issued: Vol. I in January, 1899 (Treas. Dept. Document No. 2089, reprint with appendix); Vol. II in January, 1900 (Doc. No. 2166, with appendix), and Vol. III in January, 1901, covering 1900, and beginning the numbering again at No. 1. (Doc. No. 2217.)

The compilations include the general circulars and are topically indexed. A new official edition, or a similar circular, will

even always guide, the courts, they are authoritative and cannot be over ruled by any other executive officer. They must be complied with before appeal can be had to a court. T. D. 20459, Dec. 22, 1898. Much needless trouble results from futile attempts to avoid a tax which has been imposed and insisted upon by the revenue officers. There are provisions for correction and for refund; and, where it is impracticable to procure, upon courteous application, an acceptable ruling within the penalty time limit, it is better to pay the tax under protest and thereafter apply for refund and, if refused, appeal to the courts. R. S., § 3226. "The idea that every taxpayer is entitled to the delays of litigation is unreasonable." Swayne, J., in (1880) *Springer v. U. S.*, 102 U. S. 586, 594; 26 L. Ed. 253.

"It is a general and just principle of law * * * that, where a taxpayer insists upon relief, he should be required to settle the amount fairly due from him, whether the proper technical steps have been taken or not, before any relief is granted to him." (1900) *Robards v. Franks*, 103 Fed. Rep. 276, citing (1875) *State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663.

"No suit for the purpose of restraining the as-

doubtless be issued by the Treasury Department, covering questions which are sure to arise in applying the present law. These rulings are generally cited, "T. D." (Treasury Decision).

A digest by Yerkes, covering

the earlier period, 1864-1898, was issued in 1906 as *Tres. Dept. Doc. No. 2438*. This period had been reported in the *Internal Revenue Record* (which was not published after Dec., 1897).

assessment or collection of any tax shall be maintained in any court." R. S. 3224.

(1870) Pullan v. Kinsinger, 2 Abb. U. S. 94; (1874) U. S. v. Black, 11 Blatchf. U. S. 543, 128 U. S. 40; (1883) Snyder v. Marks, 109 U. S. 189, 27 L. Ed. 901; (1881) U. S. v. Savings Bank, 104 U. S. 728, 26 L. Ed. 908.

Collection of a State license tax cannot be stayed by injunction, even if the tax is discriminatory, extortionate and illegal. It should be paid and the proper remedy sought. (1904) West. Un. Tel. v. Winnsboro, 71 S. C. 231.

As to the value and force of administrative rulings, see: (1890) Schell's Executors v. Fauche, 138 U. S. 562, 572 (tariff). "In all cases of ambiguity the contemporaneous construction, not only of the courts, but of the departments, and even of the officials whose duties it is to carry the laws into effect, is universally held to be controlling." 30 L. Ed. 627.

See also (1886) U. S. v. Hill, 120 U. S. 169, 30 L. Ed. 627 (naturalization fees); (1901) Fairbank v. U. S., 181 U. S. 283, 308, 45 L. Ed. 862; (1901) McClain v. Penna, etc., Co., 108 Fed. Rep. 618, 620; (1902) McNally v. Field, 119 Fed. Rep. 445, 448; (1904) U. S. v. Cole, 134 Fed. Rep. 697; (1903) Wheaton v. Weston & Co., 128 Fed. Rep. 151, 153, where the court "regrets to be obliged to differ with" an attorney-general; (1890) St. Paul, etc., Ry. Co. v. Phelps, 137 U. S. 528, 34 L. Ed. 767 (land grants); (1890) Merritt v. Cameron, 137 U. S. 542, 34 L. Ed. 772; (1874) Smythe v. Fiske, 23 Wall. 374, 382 (tariff).

In an early case the court found the commissioner too ready to rule both ways, and, in determining what the law actually was, gave little weight to such

rulings. (1867) *Cardinel v. Smith*, Deady U. S., 197, 204.

See notes on Construction under § 23, *post*.

As to whether a "ruling" might estop the government where, without wrong intent, it has been relied on by a person proceeded against:

See (1904) *Christie-Street Co. v. U. S.*, 129 Fed. Rep. 506. See this case cited and quoted elsewhere. And see (1871) *Hirsh v. Commonwealth (Va.)*, 21 Gratt. 785. Department regulations may have the force of law; (1895) *In re Huttman*, 70 Fed. Rep. 699 (divulging facts from license applications); (1879) *Ex parte Reed*, 100 U. S. 13, 25 L. Ed. 538, (navy); see (1901) *Spreckels v. McClain*, 109 Fed. Rep. 76; (1902) 113 Fed. Rep. 244. But not defeat the law; (1877) *U. S. v. 200 Barrels*, 95 U. S. 571, 24 L. Ed. 491; (1882) *Campbell v. U. S.*, 107 U. S. 407, 410, 27 L. Ed. 592 (exporter's drawback); (1891) *U. S. v. Eaton*, 144 U. S. 677, 686, 36 L. Ed. 591 (oleomargarine); (1912) *Marks v. U. S.*, 196 Fed. Rep. 476, 479 (opium case: "The treasury department cannot repeal an Act of Congress"); see (1886) *U. S. v. Symonds*, 120 U. S. 46, 30 L. Ed. 557 (navy); (1896) *In re Kollock*, 165 U. S. 526, 41 L. Ed. 813 (oleomargarine).

The secretary of the treasury has the power to make regulations (R. S. § 161), and a regulation is a proper one which forbids a collector to produce official records (distillers' reports) in a State court. (1900) *Boske v. Comingore*, 177 U. S. 459, affirming (1899) 96 Fed. Rep. 552; (1903) *In re Lamberton*, 124 Fed. Rep. 446. R. S. § 3204, amended by June 21, 1906, requires the collector to certify certain records to local prosecuting officers.

GENERAL TABLE OF STATUTES.

The development of the Internal Revenue system and legislation in the U. S. may be traced through the statutes, as follows:

March 3, 1791, ch. 15, 1 Stat. 199.

Excise on spirits.

June 5, 1794, ch. 45, 1 Stat. 373.

Internal duties on carriages for persons.

May 28, 1796, ch. 37, 1 Stat. 478.

Increasing carriage duties.

July 6, 1797, ch. 11, 1 Stat. 527.

Stamp tax on documents.

December 15, 1797, ch. 1, 1 Stat. 536.

Postponing stamp tax of 1797.

March 19, 1798, ch. 20, 1 Stat. 545.

Amending stamp tax of 1797.

April 7, 1798, ch. 25, 1 Stat. 547.

Extending law of 1794.

July 14, 1798, ch. 75, 1 Stat. 597.

Direct tax on dwellings and slaves. See note, 1 Stat. 580,
for list of direct tax acts.

February 28, 1799, ch. 17, 1 Stat. 622.

Amending stamp tax of 1797.

April 23, 1800, ch. 31, 2 Stat. 40.

Establishing a general stamp office.

March 3, 1801, ch. 19, 2 Stat. 109.

Amending Act of 1800.

April 6, 1802, ch. 19, 2 Stat. 148.

Repealing internal taxes.

July 22, 1813, ch. 16, 3 Stat. 22.

Method of collecting direct and internal taxes.

July 24, 1813, ch. 22, 3 Stat. 39.

Establishes office of commissioner of internal revenue.

- July 24, 1813, ch. 24, 3 Stat. 40.
Carriage tax.
- July 24, 1813, ch. 25, 3 Stat. 42.
Distillers.
- July 24, 1813, ch. 26, 3 Stat. 44.
Auction sales.
- August 2, 1813, ch. 37, 3 Stat. 53.
Direct tax.
- August 2, 1813, ch. 39, 3 Stat. 72.
License tax on retail merchants, liquor dealers, etc.
- August 2, 1813, ch. 53, 3 Stat. 77.
Stamp tax on notes, bills, etc.
- August 2, 1813, ch. 56, 3 Stat. 82.
Further details as to method of collection.
- December 10, 1814, ch. 11, 3 Stat. 148.
Amending stamp tax of 1813.
- December 15, 1814, ch. 12, 3 Stat. 148.
New rates on carriages.
- December 21, 1814, ch. 15, 3 Stat. 152.
Spirits and licenses.
- December 23, 1814, ch. 16, 3 Stat. 159.
Auctions, licenses, etc.
- January 18, 1815, ch. 22, 3 Stat. 180, 186.
Manufactured goods, furniture, etc.
- February 27, 1815, ch. 61, 3 Stat. 217.
Gold and silver plate, etc.
- March 3, 1815, ch. 91, 3 Stat. 230.
Amending Act of 1815 as to furniture, watches, etc.
- February 22, 1816, ch. 18, 3 Stat. 254.
Repealing tax on plate and jewelry.
- April 9, 1816, ch. 41, 3 Stat. 264.
Repealing tax on furniture and watches.
- April 19, 1816, ch. 58, 3 Stat. 291.
Amending spirits license Act of 1814.
- December 23, 1817, ch. 1, 3 Stat. 401.
To abolish internal duties.
- March 3, 1823, ch. 55, 3 Stat. 779.
To permit validating by post payment deeds, etc.
- August 5, 1861, ch. 45, 12 Stat. 292.
Tariff and direct tax, including income.

July 1, 1862, ch. 119, 12 Stat. 432.

General internal revenue act; provides for department;
basis of all later legislation on the subject.

March 3, 1863, ch. 74, 12 Stat. 713, 737.

Amends 1862 Act.

March 7, 1864, ch. 20, 13 Stat. 14.

Amends 1862 Act.

June 30, 1864, ch. 173, 13 Stat. 223.

Complete general Act, elaborating Act of 1862.

July 4, 1864, 13 Stat. 417.

Joint resolution; special income.

December 22, 1864, 13 Stat. 420.

Amends general Act.

March 3, 1865, ch. 78, 13 Stat. 469.

Amends last Act.

March 10, 1866, ch. 15, 14 Stat. 4.

Interprets general Act.

July 13, 1866, ch. 184, 14 Stat. 98.

First general Act to reduce; special taxes substituted for
licenses.

March 2, 1867, ch. 169, 14 Stat. 471.

Changes and reductions.

March 31, 1868, 15 Stat. 58.

Reductions.

July 20, 1868, ch. 186, 15 Stat. 125.

New Act covering spirits, tobacco, etc.

July 14, 1870, ch. 255, 16 Stat. 256.

Repeals certain occupation taxes, certain stamp taxes, etc.

March 3, 1871, 16 Stat. 601.

Resolution for reduction.

June 6, 1872, ch. 315, 17 Stat. 230.

Reduction of taxes.

December 24, 1872, ch. 13, 17 Stat. 401.

Reduction of department.

March 3, 1873, 17 Stat. 621.

A compilation of Internal Revenue Laws.

February 8, 1875, ch. 36, 18 Stat. 310.

Tax on State bank circulation.

March 1, 1879, ch. 125, 20 Stat. 327.

Numerous amendments of Revised Statutes.

March 3, 1883, ch. 121, 22 Stat. 488.

To reduce; and to repeal tax on checks, matches, etc.

August 2, 1886, ch. 840, 24 Stat. 209.

Oleomargarine.

October 1, 1890, 26 Stat. 567.

McKinley bill: opium tax.

August 28, 1894, 28 Stat. 509.

Wilson bill: income tax (unconstitutional): tax on playing cards.

June 6, 1896, ch. 337, 29 Stat. 253.

Filled cheese.

June 13, 1898, ch. 448, 30 Stat. 448.

Spanish war tax.

April 12, 1900, ch. 191, 31 Stat. 77.

Foraker Act, Porto Rico.

April 30, 1900, ch. 339, 31 Stat. 141.

Hawaii.

May 12, 1900, ch. 393, 31 Stat. 177.

Redemption spoiled stamps.

March 2, 1901, ch. 806, 31 Stat. 938.

Amending Act of 1898; reduction and repeal.

July 25, 1901, 32 Stat. Pt. 2, p. 1983.

Executive proclamation under Foraker Act of 1900.

February 26, 1902.

Joint resolution: return of imprinted stamps.

March 8, 1902, ch. 140, 32 Stat. 54.

Philippines.

April 12, 1902, ch. 500, 32 Stat. 96.

War Revenue Repeal Act.

May 9, 1902, ch. 785, 32 Stat. 193.

Amends oleomargarine law.

June 27, 1902, ch. 1160, 32 Stat. 406.

Refund and remission of certain taxes: legacy and bill of lading.

June 30, 1902, 32 Stat. 506.

Redemption of stamps.

July 1, 1902, ch. 1369, 32 Stat. 691.

Philippines.

January 7, 1906, 34 Stat. 217.

Denatured alcohol.

June 29, 1906, 34 Stat. 620.

Porto Rico.

February 1, 1909, 35 Stat. 590.

Refunding taxes on foreign exchange.

February 4, 1909, ch. 65, 35 Stat. 594.

Porto Rico.

February 9, 1909, ch. 101.

Philippines.

August 5, 1909, ch. 6, 36 Stat. 118.

Payne-Aldrich tariff, excepts insular possessions; establishes corporation excise.

April 9, 1912, 37 Stat. 81.

Phosphorous matches.

October 3, 1913, ch. 16, § 4, subd. D.

Porto Rico.

There are a few minor acts not here enumerated.

THE INTERNAL REVENUE LAWS IN GENERAL.

The law as it was when the Act of 1914 was passed.

It is to be borne in mind that the Act of 1914 for increased revenue is but an emergency measure which is super-added to an established system of national internal taxation. To such an extent is this true that the Senate frowned down every attempt to avail of this occasion for improving the general legislation on the subject. The chairman in charge illustrated this by saying, "I'm talking now about the revenue law, not the regular law"—although of course law is law and revenue is regular! Users of this specialized manual may well desire some general information as to other more permanent portions of the system and as to the principal statutes and their interpretation.

For obvious reasons the few notes which are appended to the respective statutes enumerated below are only intended to be illustrative. Each of the more important fields has its own technical, and often extended, treatment in other works. Liquors and tobacco, for instance, constitute almost a specialty, and the great modern excise laws, corporation and income taxes, can here hardly be touched. The

material in this chapter is in effect a slightly annotated topical index for the general subject.

The internal revenue taxes are of several distinguishable kinds, though not technically so classified.

1. Special taxes on occupations which are definite in amount, like license fees.

2. Documentary and proprietary stamp taxes, where the unit rate is definite, and the taxpayer can usually readily determine the total amount.

3. Taxes on specified things: Liquors, tobacco, opium, playing cards, matches, oleomargarine, filled cheese, mixed flour and bank circulation. Those on liquors and tobacco are large revenue producers, but they are also quasi-police or regulative measures in the guise of taxes. The idea of protecting the community runs with, and occasionally outruns, the thought of revenue.

4. Excise taxes which are proportioned to the taxable amount of capital employed, business done or income received.

The severest penalties and the strictest enforcement apply, for the most part, to the regulative statutes and the special taxes dealing with liquor and tobacco. Aside from the technical provisions of the laws, it is in the very atmosphere of modern tax enforcement that purely revenue measures should be administered with less severity than police and quasi-police regulations. Where the government only wants money, and the amount is not excessive, the people generally pay a tax without serious default or deception, and there is little need of crim-

inal or penal enforcement. Ordinary occupation and stamp taxes occasion more administrative difficulties than actual litigation or punishment. In the fourth class mentioned above, where the tax is assessed on reported or ascertained data, there is felt to be a hardship similar to the severity of the regulative taxes. The government here encroaches further upon private grounds, by more or less inquisitorial methods in search of frauds, and a sort of resentment leads the taxpayer to contest the assessment. A man may often elect whether or not he is to incur any one of the taxes of the first three classes; but he is, in a sense, cornered as to the fourth class, and must submit with good or bad grace. Therefore, as well as because these taxes largely have their initial incidence upon corporations, it is here that the major part of civil litigation arises.

The organization and administration of the Internal Revenue Office are provided for by Title XXXV and certain other sections of the Revised Statutes, as amended, and by subsequent acts. The easiest way to examine these laws as a whole is to refer to the official compilation made under the direction of the commissioner.¹

The methods of assessment and collection of taxes are covered by §§ 3172-3231, and amendments.

For applicability of general laws, see *post*, under § 23.

Special or license taxes are imposed by § 3244, but it has been largely amended, and several subjects are covered by separate acts. Special taxes, generally, are covered by §§ 3232-3246. The special taxes are on rectifiers, liquor dealers, malt dealers, still

1. The latest extant Compilation of Internal Revenue Laws is that of 1911, showing the law in force March 4, 1911. It is

Treas. Dept. Document No. 2601, and can be purchased from the Public Printer, or through the publishers of this book.

makers, brewers, makers of oleomargarine, adulterated butter, filled cheese and mixed flour.

For general treatment and specific application, see *post*, the several taxes and § 3.

Distilled spirits, including imitation wines, etc., are covered by R. S. §§ 3247-3334, with amendments and separate acts. See *post*, § 2.

Fermented liquors, by R. S. §§ 3335-3354, amendments and Act of June 18, 1890, 26 Stat. 162. See *post*, § 1.

Tobacco and snuff are covered by R. S. §§ 3355-3386, amendments and separate acts. See *post*, § 4.

Cigars are covered by R. S. §§ 3287-3406.

Opium, by the Act of Oct. 1, 1890, 26 Stat. 567, amended by March 3, 1897, 29 Stat. 228, and by February 9, 1909, 35 Stat. 614.

While the penalties are severe, the law is not properly a revenue measure, but a method of suppressive regulation. (1912) *Marks v. U. S.*, 196 Fed. R. 476 (as to what constitutes manufacture); (1912) *Shelley v. U. S.*, 198 Fed. R. 88; (1913) 229 U. S. 239 (as to what is not manufacture); (1911) *U. S. v. Don Kee*, 192 Fed. R. 733 (an insufficient indictment).

Department regulations of July 1, 1911, cover the matter.

The same Congress which enacted the present emergency revenue also passed a complete new Act on Opium, imposing registration and a special tax on producers, makers and distributors. The tax is nominal and "statistical" or regulative, but the provisions are elaborate and stringent. Written orders in duplicate are required for every transaction. Penalties run to \$2,000 or five years or both. The Act applies also to insular possessions and canal zone, and does not repeal the Act of February 9, 1909.

Oleomargarine, adulterated, process or renovated butter, by the Act of Aug. 2, 1886, 24 Stat. 209; Oct. 1, 1890, 26 Stat. 621, amended by May 9, 1902, 32 Stat. 193.

The **oleomargarine Act** (1886, ch. 209, amended 1902, ch. 93) is upheld by (1904) *McCray v. U. S.*, 195 U. S. 27, 49 L. Ed. 78. "The manufacture * * * may be prohibited by a free government without a violation of fundamental rights." P. 64; (1910) *Vermont v. U. S.*, 217 U. S. 605, 54 L. Ed. 899; (1909) *Moxley v. Hertz*, 216 U. S. 344, 54 L. Ed. 510.

Makers and dealers pay special taxes under R. S. § 3244, as well as a tax on the product. See (1914) *Hammond Packing*

Co. v. Montana, 233 U. S. 331, as to State legislation on the subject. (1888) Powell v. Pena, 127 U. S. 678, 32 L. Ed. 253; (1897) Schollenberger v. Penna, 171 U. S. 1, 43 L. Ed. 49; (1897) Collins v. New Hamp., 171 U. S. 30, 43 L. Ed. 60.

The Commissioner (Report 1913) finds the whole law unsatisfactory and urges a complete revision.

Renovated and adulterated butter. (1912) U. S. v. 11,150 Pounds of Butter, 195 Fed. Rep. 657; (1908) Coopersville Co. v. Lemon, 163 Fed. Rep. 145.

The commissioner finds the law unsatisfactory and urges a revision and the substitution of the butter fat test for the present moisture test, which in strict enforcement has done injustice to the point of oppressiveness. Report, 1913.

There are special taxes on makers and dealers (R. S. § 3244), as well as stamp taxes on the product.

The secretary of agriculture enforces this law, under the Food and Drugs Act of 1906.

A dealer in adulterated butter is liable whether or not he "knowingly" offended. (1913) Lawrence v. Seyburn, 202 Fed. Rep. 913.

Filled cheese, by the Act of June 6, 1896, 29 Stat. 253.

This business has practically ceased since 1910.

There is a coupon-stamp tax on the product, and both makers and dealers pay special taxes (R. S. § 3244).

When the product is exported it must first pay the tax; not relieved as in tobacco. (1904) Cornell v. Coyne, 192 U. S. 418.

A department circular (T. D. 1516) covers the matter.

Mixed flour, by the Act of June 13, 1898, 30 Stat. 448, §§ 35-49, amended March 2, 1901, 31 Stat. 494 and by April 12, 1902, 32 Stat. 96.

The makers and packers pay a special tax under R. S. § 3244 and the product pays a tax collected by coupon-stamps.

This tax is of course not in any true sense a revenue measure.

Department Regulations No. 25, revised August, 1907, cover the matter.

The tax on legacies, Act of June 13, 1898, 30 Stat. 464, §§ 29, 30, was repealed April 12, 1902, 32 Stat. 96, with a saving clause; and the Act of June 27, 1902, 32 Stat. 406, provided for refunding certain taxes wrongfully collected on contingent interests.

The **inheritance or succession tax** is retained in the present summary, partly because of its "hang-over" feature.

Succession tax, §§ 29-31 of the Act of 1898, held constitutional: not a direct tax; not lacking uniformity of reason of exemption; not exercise of power belonging to the States. (1899) *High v. Coyne*, 93 Fed. Rep. 450; affirmed (1900) 178 U. S. 111, 44 L. Ed. 997; (1900) *Knowlton v. Moore*, 178 U. S. 41-110, 44 L. Ed. 969; elaborate opinion by Justice White. (1904) *Vanderbilt v. Eidman*, 196 U. S. 480, 49 L. Ed. 563; (1901) *Eidman v. Martinez*, 184 U. S. 578, 46 L. Ed. 697; (1909) *Hertz v. Woodman*, 218 U. S. 205, 54 L. Ed. 1001; (1911) *Robertson v. U. S.*, 220 U. S. 616, 55 L. Ed. 611.

The **corporation tax** imposed by the Tariff Act of 1909, Act of Aug. 5, 1909, c. 6, 36 Stat. 112, amended by June 17, 1910, is upheld and elaborately considered in the **Corporation Tax Cases** (1911) *Flint v. Stone Tracy Co.*, 220 U. S. 107-177, 55 L. Ed. 389, distinguishing the **Income Tax Cases**, (1894) *Pollock v. Farmers' Loan*, 157 U. S. 429; 158 U. S. 601, 39 L. Ed. 759, 1108.

Some recent cases on the Act are: (1914) *Anderson v. 42 Broadway*, 213 Fed. Rep. 777; (1914) *Wilkes-Barre Co. v. Davis*, 214 Fed. Rep. 511; (1914) *Nat. Bk. Commerce v. Allen*, 211 Fed. Rep. 743; (1912) *McCoach v. Minehill, etc., Co.*, 228 U. S. 295; (1910) *Eliot v. Freeman*, 220 U. S. 178, 55 L. Ed. 424; (1912) *Pennsylvania Steel v. N. Y. City Ry.*, 198 Fed. Rep. 774.

Playing cards. Taxed by the Act of Aug. 28, 1894, 28 Stat. 509, 560. The manufacturer must register, for control, but does not pay a special tax.

Cards such as are used in games like "authors" are exempt; but the tax applies to all substitutes for ordinary cards. *T. D.* 959, Dec. 13, 1905. (1906) *U. S. v. Neustaedter*, 149 Fed. Rep. 1010.

Where Thomas, D. J., wrote thus vigorously about the badly framed law, the "intention should have been expressed distinctly, rather than in a form that causes doubt and tends to baffle an appreciation of the meaning. * * * The statute is so ambiguous as to be positively unfair, and it is so obviously misleading as to offend the sense of justice. * * * It is hoped that the attention of Congress may be called to the neces-

sity of amending the statute, so that its meaning may be plain." (It is hardly necessary to say that "Congress" does not read the reports of court decisions on such minor subjects.)

The tax on bank circulation is covered by R. S. 3407-3417.

The tax on State bank circulation illustrates the oft quoted statement of Marshall, C. J., in (1819) *McCulloch v. Maryland*, 4 Wheaton, 316, 431, that the power to tax involves the power to destroy.

It was designed to drive such circulation out of existence. See (1884) *Head Money Cases*, 112 U. S. 580, 596, 28 L. Ed. 798, restating the case (1869) *Veazie Bk. v. Fenno*, 8 Wall. 533, 549.

Yet it was seriously, though only incidentally, argued in the debates on this Act that the circulation tax of 1875 should be removed and the States permitted to develop a safe local bank currency. Cong. Rec. 18522.

Clearing house certificates are not deemed circulating notes. T. D. 1271, Nov. 14, 1907.

R. S. § 3408 taxes circulation, and § 3583 makes it a criminal offense to issue notes, checks or any obligations under a dollar for use as money. See R. S. § 5214.

Tax on white phosphorous matches.

The Act of April 9, 1912, c. 75, 37 Stat. 81, imposes a tax (to take effect July 1, 1913) on white phosphorous matches, to be paid by stamps, two cents per hundred. The maker must be registered and give a bond, but pays no special or license tax.

In 1871 the English stamp office prepared match stamps bearing the legend *ex luce lucellum* (from light a little profit), but the classical punster was punished; the wrappers were destroyed.

Income Tax, corporate and individual.

This was imposed by the second section of the Tariff Act of 1913, Oct. 3, c. 16. All relevant internal revenue laws are made applicable.

It applies to Porto Rico and the Philippines, but the revenues so collected accrue to the respective general insular governments.

The American Bar Association has just urged a complete revision of the whole law as being loosely drawn and most unsatisfactory.

The income tax which was part of the Wilson Tariff Act, August 5, 1894, 28 Stat. 509, §§ 27-37, was held unconstitutional.

(1895) *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 429, 39 L. Ed. 759; 158 U. S. 601, 39 L. Ed. 1108.

Hawaii. Act of April 30, 1900, 31 Stat. 141. See *post*, under § 24.

Porto Rico. Act of April 12, 1900, 31 Stat. 77; Act of June 29, 1906, 34 Stat. 620; Act of Oct. 3, 1913, c. 16, § 4 (Tariff Act). See *post*, under § 24.

Philippines. Act of March 8, 1902, 32 Stat. 54; Act of April 28, 1904, 33 Stat. 574; Act of Aug. 5, 1909, 36 Stat. 83 (also as to **Guam and Tutuila**); Act of Oct. 3, 1913, ch. 16, § 4 (Tariff Act). See *post*, under § 24.

Miscellaneous statutory provisions. Questions of jurisdiction, suits, evidence, practice, duties and discipline of officers, penalties for perjury and bribery, claims, government priority in insolvent estates, etc., etc., are covered by the Judicial Code, the Criminal Code, scattered sections of the R. S. and special acts.

Several other acts and R. S. sections are in force, dealing with various subjects, such as post-stamping, § 3422, redemption, § 3426 amended, manufacturing in bonded warehouse, § 3433 amended, withdrawals, drawbacks, assessment of unstamped articles, § 3437, refunds of taxes on export bills of lading, foreign bills of exchange, etc.

R. S. §§ 3441-3465, contain certain provisions applicable in common to several objects. See *post*, *passim*.

THE
WAR REVENUE LAW
OR THE
EMERGENCY REVENUE ACT
OF 1914

APPROVED OCTOBER 22, 1914.

AN ACT TO INCREASE THE INTERNAL REVENUE, AND
FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

FERMENTED LIQUORS, BEER, ETC.

That there shall be levied, collected, and paid in lieu of the tax of \$1 now imposed by law, a tax of \$1.50 on all beer, lager beer, ale, porter, and other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by

whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly: *Provided*, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp has been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamp: *Provided further*, That until appropriate stamps are prepared and furnished, the stamps heretofore used to denote the payment of the internal-revenue tax on fermented liquor may be stamped or imprinted with a suitable device to denote the new rate of tax herein imposed, and shall be affixed to all packages containing such liquors on which the tax imposed by this Act is paid. Any person having possession of unaffixed stamps heretofore issued for the payment of the tax on fermented liquors shall present the same to the collector of the district, who shall receive them at the price paid for such stamps by the purchaser and issue in lieu thereof new or imprinted stamps at the rate provided in this Act.

Fermented Liquors, Beer, Etc. (Increased Tax.)

Cf. Act of July 1, 1862, 12 Stat. 432; Act of March 3, 1863, 12 Stat. 713, 737; Act of April 1, 1864; Act of July 13, 1866, 14 Stat. 98; Act of March 1, 1879, 20 Stat. 327; Act of June 13, 1898, 30 Stat. 448; Act of March 2, 1901, 31 Stat. 938; Act of April 12, 1902, 32 Stat. 54.

Fermented liquors are taxed under Revised Statutes, §§ 3335 *et seq.*, and brewers pay a special tax under Revised Statutes, § 3244. The present act merely amends § 3339 by increasing the barrel rate. The tax rate has varied at different periods from sixty cents to two dollars.

The method of collecting the tax without stamps is found in Revised Statutes, §§ 3182 *et seq.* Receipts are given for cash payments, but never for stamp payments nor in lieu of stamps, § 3183.

As the increase in the Act of 1914 is imposed, not as an extra tax, but by express substitution "in lieu of the tax now imposed," the department requested Congress to add a proviso to the last section of the Act, so as to restore the former tax automatically when the emergency tax ceases. See *post*, § 24.

Such an increase of an excise tax is constitutional. (1902) *Patton v. Brady*, 184 U. S. 608, 46 L. Ed. 713.

The added tax is on beer stored or removed by the brewer, not by the dealer. *Op. Atty. Gen.* XXII, 279; XXIII, 227. T. D. 20464, Dec. 28, 1898; 20487, Jan. 3, 1899.

Beer defined: (1884) *Sarlls v. U. S.*, 152 U. S. 570, 38 L. Ed. 556; (1892) *In re McDonough*, 49 Fed. Rep. 360. See definition of brewer, R. S. § 3244.

Hop tonic, maltina, hop ale, etc. (1901) *Davis v. Daugherty*, 105 Fed. Rep. 769; T. D. 829, 19154, 19025.

Root, spruce, ginger and herb beer. T. D. 19383, July 2, 1898; 20233, Oct. 22, 1898; T. D. 19445.

Rice beer. 35 Int. Rev. Rec. 253.

Speaking of the war which induced this Act, beer as distinct from ale began in England when hops came over from Flanders early in the 16th century. Wellington repealed the beer tax in 1830. "The new beer bill has begun its operations. Everybody is drunk. Those who are not singing are sprawling. The sovereign people are in a beastly state." Sydney Smith, *Life and Correspondence*.

Although there are indications of haste in this entire act, it was stated in Congress that steps had early been taken to have the new stamps printed. The unexpected protraction of the debates may have afforded ample time.

WINES, LIQUEURS, AND CORDIALS.

Sec. 2. That upon all still wines, domestic and imported, when sold or offered for sale or consumption, there shall be levied and collected taxes as follows: On each bottle containing one-fourth pint or less, one-fourth cent; on each bottle containing more than one-fourth pint and not more than one-half pint, one-half cent; on each bottle containing more than one-half pint and not more than one pint, 1 cent; and on each bottle containing more than one pint and not more than one quart, 2 cents; and on still wines in all other containers, not herein specially provided for, the tax shall be at the rate of 8 cents per gallon.

That upon all domestic and imported champagne and other sparkling wines, and upon all artificially carbonated wines when sold or offered for sale or consumption, there shall be levied and collected taxes as follows: Upon each bottle containing one-half pint or less, 5 cents; on each bottle containing more than one-half pint and not more than one pint, 10 cents; on each bottle containing more than one pint and not more than one quart, 20 cents; and on other all containers at the rate of 20 cents per quart; and on all liqueurs, cordials, or similar compounds, domestic and imported, by whatever name sold or offered for sale, there shall be levied and collected a tax on each bottle containing not more than one-half pint, $1\frac{1}{2}$ cents; more than one-half pint and not more than one pint, 3 cents; more than one pint and

not more than one quart, 6 cents; and on larger containers a tax at the rate of 24 cents per gallon.

All of the taxes imposed in the preceding paragraphs of this section shall be paid by stamps to be affixed to each bottle or container in which such still wines, champagne wines, carbonated wines, liqueurs, or cordials, or similar compounds are sold or offered for sale: *Provided*, That when such still wines, champagne wines, carbonated wines, liqueurs, cordials, or similar compounds, taxable under the provisions of this section, are sold or delivered by the producer, importer, or dealer in wholesale quantities to other dealers, including rectifiers, manufacturing chemists, and druggists, the dealer receiving and selling, or offering the same for sale or consumption to any person other than a dealer, shall affix thereto the stamps hereinbefore prescribed: *And provided further*, That the stamp tax herein imposed shall not be collected on any still wine used by any rectifier, manufacturing chemist, or druggist in the manufacture of any liqueur, cordial, or compound subject to any internal-revenue tax imposed by this Act.

The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps denoting the tax herein imposed, to be affixed and canceled in such manner as he with the approval of the Secretary of the Treasury, may prescribe; and in the absence of such stamps from any bottle or container containing wine, liqueur, cordial, or compound taxable under the provisions of this section, sold or

offered for sale or consumption, shall be prima facie evidence that the tax thereon has not been paid, and all such wines, liqueurs, cordials, or compounds shall be forfeited to the United States.

There shall be levied and assessed against the maker or producer of all wines fortified under the provisions and conforming to the requirements of the sections of the tariff Act of October first, eighteen hundred and ninety, relating to the fortification of pure sweet wines, as amended, and as further amended by this Act, a tax of 55 cents on each taxable gallon of grape brandy or wine spirits used by him in the fortification of such wines: *Provided, however,* That the maker or producer of such fortified wines shall, under regulations and suitable bonds, to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, have assessed against him monthly the said tax of 55 cents on each taxable gallon of grape brandy or wine spirits used by him during the preceding month, which assessment shall be paid within ninety days from the date of notice thereof: *Provided further,* That nothing herein contained shall be construed as exempting any still wines, cordials, liqueurs, or similar compounds from the payment of any stamp tax provided for in this section.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all necessary regulations to make effective the provisions of this section.

That sections forty-two, forty-three, forty-five,

forty-six, and forty-nine of the Act of October first, eighteen hundred and ninety, as amended by section sixty-eight of an Act approved August twenty-eighth, eighteen hundred and ninety-four, and by an Act approved June seventh, nineteen hundred and six, are further amended to read as follows:

“ Sec. 42. That any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations, and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue in determining the liability of any distiller of wine spirits to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this Act: *Provided*, That such wine containing after fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States.

“ Sec. 43. That the wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice, to

which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: *Provided*, That the addition of pure boiled or condensed grade must or pure crystallized cane or beet sugar, or pure dextrose sugar or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification provided in this Act, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: *Provided, however*, That the cane or beet sugar, or pure dextrose sugar so used shall not be in excess of eleven per centum of the weight of the wine to be fortified under this Act: *And provided further*, That the addition of water herein authorized shall be under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the

Treasury, may from time to time prescribe: *Provided, however,* That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same, after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume.

“ Sec. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall

prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehous-

ing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines.

“ Sec. 46. That wine spirits may be withdrawn from special bonded warehouses at the instance of any person desiring to use the same to fortify any wines, in accordance with commercial demands of foreign markets, when such wines are intended for exportation, without the payment of tax on the amount of wine spirits used in such fortification, under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security to prevent the use of such wine spirits free of tax otherwise than in the fortification of wine intended for exportation and for the due exportation of the wine so fortified, as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and all of the provisions of law governing the exportation of distilled spirits free of tax, so far as applicable, shall apply to the withdrawal and use of wine spirits and the exportation of the same in accordance with this section; and the Commissioner of Internal Revenue is authorized, subject to the approval of the Secretary of the Treasury, to prescribe that wine spirits intended for the fortification of wines under this section shall not be introduced into such wines except under the immediate supervision

of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Whenever transportation of such wine is to be effected by land carriage the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as to sealing packages and vehicles containing the same, and as to the supervision of transportation from the point of departure, which point shall be determined as the place where such wine spirits may be introduced into such wines to the point of destination as may be necessary to insure the due exportation of such fortified wines: *Provided*, That where, in accordance with regulations of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, wines fortified under the provisions of this Act with brandy taxable at 55 cents per proof gallon are exported directly from the winery where fortified, there shall be allowed an abatement or refund of tax equivalent to 55 cents per gallon on each proof gallon of wine spirits contained in such wine at the time of exportation, which amount of wine spirits shall be ascertained by the Commissioner of Internal Revenue under regulations approved by the Secretary of the Treasury: *Provided*, That such wine spirits on which abatement or refund of tax is allowed shall not exceed the total

amount of alcohol in such wine over and above fourteen per centum thereof.

“ Sec. 49. That wine spirits used in fortifying wines may be recovered from such wines only on the premises of a duly authorized grape-brandy distiller, and for the purpose of such recovery wine so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on the product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape juice and that obtained from the added distilled wine spirits: *Provided*, That when application for such special permit for redistillation shall be made by the producer of any wines fortified with brandy subject to the tax of 55 cents per proof gallon, before such wine shall have been moved from the premises of the winery where fortified and the redistillation is had under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, an abatement or refund of the tax assessed against said producer shall be allowed equivalent to 55 cents per proof gallon of brandy contained in said spirits at the time of redistillation, which amount of brandy shall be ascertained by the Commissioner of Internal Revenue, under regulations approved by the Secretary of the Treasury, and wine spirits so recovered may be used in the manner pro-

vided by law for the fortification of other wine: *Provided*, That such wine spirits on which abatement or refund of tax is allowed shall not exceed the total amount of alcohol in such wine over and above fourteen per centum thereof."

That section three and section six of the Act of June seventh, nineteen hundred and six, amending the laws relating to the fortification of pure sweet wines, are hereby amended to read as follows:

" Sec. 3. That the Commissioner of Internal Revenue is hereby authorized to assign at each winery where wines are to be fortified such number of gaugers or storekeeper gaugers, in the capacity of gaugers, for special duties as may be necessary for the proper supervision of the making and fortifying of such wines, and the compensation of such officers shall not exceed \$5 per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, but not to exceed \$2 per diem for said board bills. That bonds hereafter given under the provisions of the aforesaid Act of October first, eighteen hundred and ninety, as amended, shall be conditioned for the payment of the tax on all brandy removed thereunder and not used and accounted for within the time and in the manner required by law and regulations, and for the payment of all taxes imposed on the brandy so withdrawn and used for fortifications; and the said bonds shall contain such

other conditions as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

“ Sec. 6. That any person who by any process recovers from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety, and amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said Act and its amendments, or who shall rectify, mix, or compound with distilled spirits or other materials, except as provided in this Act, such grape brandy fortified wines or wine spirits unlawfully recovered therefrom, shall, on conviction, be punished for each such offense by a fine of not less than \$200 nor more than \$1,000. But the provisions of this section and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, or other internal revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of pure sweet wines fortified under the provisions of this Act with each other or with other wines: *Provided*, That the pure sweet wines fortified under the provisions of this Act may be used in the manufacture of cordials, liqueurs, and similar compounds on which an internal revenue tax of 24 cents a gallon is imposed, and otherwise the provision of section thirty-two hundred and forty-

four of the Revised Statutes of the United States shall remain in full force and effect.”

Wines, Liqueurs and Cordials.

The Act went into effect as law at midnight, October 22-23, 1914. This section became applicable at once, and the Commissioner of Internal Revenue sent the following telegram to all collectors:

“Beginning with to-day tax accrues on all wines sold: 2 cents a quart on still wines, 20 cents a quart on champagne, other sparkling and artificially carbonated wines; 6 cents a quart on liquors, cordials and similar compounds, and proportionate rates for other quantities. Until stamps are furnished, require dealers who sell to consumers to keep account of sales on and after to-day.”

Bottled wines of all kinds are taxed under Schedule B of the Act of 1898, June 13, ch. 448. This tax was eliminated from Schedule B of the present Act, and the whole matter brought under § 2. And see the Act of June 6, 1872, § 12.

Wine spirits (so-called cognac, distilled from fermented grape juice) may be used practically free of tax under limitations, in fortifying pure sweet wine (made of grape juice and sugar). Act of Oct. 1, 1890, 26 Stat. 567, 621, amended by Aug. 28, 1894, 28 Stat. 509, and June 7, 1906, 34 Stat. 215. This last Act imposed a tax of three cents a gallon on brandy used in fortifying sweet wines, expressly “to cover the expenses to the government” in this connection.

The provisions of the House bill as to wines were comparatively simple, but the matter was given much attention in the Senate, whose substitute was finally accepted. Ugly things were said about local and privileged interests, but the “interests” themselves got together and agreed upon the solution which was adopted. The new plan necessitated amendments to the statutes, *supra*, on the fortification of wines. The changes may be summarized thus:

Grape brandy, or wine spirits, used for fortifying wines, 55 cents a gallon, instead of three cents, assessed monthly.

Involves amending 26 Stat. 621, sections 42, 43, 45, 46 and 49.

42. By omitting the limitation to distillers; the reference to

saccharine preservation and the 14 per cent. alcohol limitation, but retaining the forfeiture for excess of 24 per cent.

43. By omitting the 4 per cent. sugar requirement; allowing use of commercial brandy; increasing 10 per cent. added sugar limit to 11 per cent.; substituting "dextrose" as a better name for anhydrous sugar; and permitting use of water under limitations and regulations. Department of Agriculture to inspect.

45. Permitting wine to be fortified elsewhere than at the vineyard.

46. Permitting wine for export to be fortified at the winery, instead of alongside the ship; and allowing a drawback.

49. Allowing a rebatement of tax on brandy recovered in the process on the premises.

Amending, also, 34 Stat. 215, sections 3 and 6:

3. Payment of tax to be secured by bonds.

6. Extending exemption from special tax of persons using fortified wines in making tax-paid cordials, etc.; and permitting wines to be blended.

Imitation wines, not made from native grapes, are taxed ten cents a pint under R. S. § 3328.

Wine made from native grapes was not an imitation champagne, although carbonic acid gas was injected into it. (1873) U. S. v. One Case of Wine, 6 Ben. 493.

The selling of wines is dealing in liquors and requires a special tax under R. S. § 3244. Vintners and druggists are excepted, under limitations, by section 3246.

A fermented liquor made from oranges, sugar and elder blossoms is wine. T. D. 19089, 1898.

So, also, a wine used as "casing fluid for leaf tobacco," if it is potable. T. D. 19333, 1898.

Creme de menthe formerly could not be made nor sold without paying a special tax. T. D. 33, Feby. 3, 1900. But the present Act exempts (only from special tax) the makers of cordials who used fortified wines.

A genuine medicinal blackberry cordial did not require a tax. T. D. 57, March 3, 1900.

Vermouth was not a wine under the Act of 1898. (1907) Taylor v. Treat, 153 Fed. Rep. 656; 166 Id. 1021.

The Congressional debates, and especially the petitions and protests submitted, portend a reduction of revenue from what

Sir Mountsteuart Grant-Duff called "the ravages of temperance." (19th Cent., July, 1887.)

For an interesting sketch of wine duties in England, see Sydney Buxton, *Finance and Politics*, I, 232 *et seq.* A chief reason why port and sherry are "fit for gentlemen" in England is that the "people were positively punished, fined and starved out of their taste" for other wines by the Methuen Treaty of 1703 and the subsequent taxes which discriminated in favor of Portugal "our old and faithful ally" when most other countries turned against England.

SPECIAL TAXES.

Sec. 3. That on and after November first, nineteen hundred and fourteen, special taxes shall be, and hereby are, imposed annually as follows, that is to say:

First. Bankers shall pay \$1 for each \$1,000 of capital used or employed, and in estimating capital surplus and undivided profits shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital, surplus, and undivided profits for the preceding fiscal year. Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, shall be a banker under this Act: *Provided*, That any postal savings bank, or savings bank having no capital stock, and whose

business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking, shall not be subject to this tax.

Second. Brokers shall pay \$30. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker.

Third. Pawnbrokers shall pay \$50. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

Fourth. Commercial brokers shall pay \$20. Every person, firm, or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, or merchandise, or to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this Act.

Fifth. Custom-house brokers shall pay \$10. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business at any

port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a custom-house broker.

Sixth. Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay \$25; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay \$50; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay \$75; having a seating capacity of more than eight hundred, shall pay \$100. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: *Provided*, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

Seventh. The proprietor or proprietors of circuses shall pay \$100. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this Act are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax

shall be imposed for exhibitions within any one State, Territory, or District.

Eighth. Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay \$10: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: *Provided further*, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations.

Ninth. Proprietors of bowling alleys and billiard rooms shall pay \$5 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, and that are open to the public with or without price, shall be regarded as a bowling alley or a billiard room, respectively.

Tenth. Commission merchants shall pay \$20. Every person, firm, or company whose business or occupation it is to receive into his or its possession any goods, wares, or merchandise to sell the same on commission shall be regarded as a commission merchant: *Provided*, That any person having paid the special tax as a commercial broker shall not be required to pay the special tax as a commission merchant: *Provided further*, That this provision shall

not apply to commission houses run upon a cooperative plan.

Special Taxes: (License or Occupation Taxes).

The section re-enacts, with some changes, the same plan, phraseology and tax rates as were found in the Act of June 13, 1898 (30 Stat. 448), which in turn was similarly based on the Act of June 30, 1864 (13 Stat. 223), and the Act of July 1, 1862 (12 Stat. 432). The Acts of 1862 and 1864 required licenses to be taken out and forbade the occupation until the fee was paid. The present Act, as in 1898, here imposes special taxes, and the last paragraph of section 4, *infra*, prohibits the business under penalty. The civil war license taxes were repealed July 14, 1870 (16 Stat. 256). The special taxes of the Spanish war tax were repealed April 12, 1902 (32 Stat. 96).

The earlier "license" became a "special tax" in 1866, ch. 184.

Special taxes are assessed on July 1st for the next fiscal year. As the Act contemplates retaining its emergency taxes only until the end of 1915, they are to be collected *pro rata* for the period when the Act is in force.

See section 23, *post*, as to records required to be kept and returns made; and as to penalty of double tax.

The origin of all our modern licensing acts may be traced to the time of Edward VI (1547-1553) when, "to take away temptations to idleness" and check vagrancy, two sessions justices were empowered to grant licenses to ale and tippling houses. Stat. 5 and 6 Edward VI, c. 25; Reeves' Hist. of English Law (Finlason edition), v. 5, p. 36.

Samuel Johnson, in his great dictionary, defines excise as, "a hateful tax levied upon commodities, and adjudged not by the common judges of property, but wretches hired by those to whom excise is paid." He has in mind the old "farming out" systems. His illustrative quotations squint at the special taxes of 1914, § 3, and Schedule B.

"Excise.

"With hundred rows of teeth the shark exceeds, and on all trades like cassawar she feeds."—Marvel.

"Ambitious now to take excise of a more fragrant paradise."—Cleveland.

As to the special taxes which are a part of the permanent tax system, or at least were on the statutes when the present emergency act was passed, see *ante*.

Section 23, *post*, extends all existing laws of this sort so far as applicable, to the new special taxes.

The principal general provisions of the Revised Statutes are:

Occupation not to be carried on until tax paid (3232); business to be registered (3233); partners at the same place pay only a single tax (3234); payment of one tax does not cover several places of business (3235); when one person has more than one occupation a tax must be paid for each (3236); the tax is due on July first, being annual, but apportioned pro rata for shorter periods (3237); to be paid by stamps (3238); the tax stamp to be conspicuously exposed (3239); each collector to keep a public list and to certify a copy to any public prosecutor on requisition (3240); in case of death or removal after payment, business may be carried on without a new tax (3241); payment does not authorize any violation of State law; the special taxes are imposed on brewers, manufacturers of stills, rectifiers, retail liquor dealers, wholesale liquor dealers; retail dealers in malt liquors, wholesale dealers in malt liquors; manufacturers of oleomargarine, wholesale dealers in oleomargarine, retail dealers in oleomargarine, manufacturers of process or renovated butter, dealers in adulterated butter, manufacturers of filled cheese, wholesale dealers in filled cheese, retail dealers in filled cheese, manufacturers and packers of mixed flour (3244, as amended).

Special occupation taxes are constitutional. (1866) License Tax Cases, 5 Wall. 462; (1900) American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 45 L. Ed. 102; (1901) W. W. Cargill Co. v. Minnesota, 180 U. S. 452 (grain warehouse); (1905) Cook v. Marshall Co., 196 U. S. 261, 45 L. Ed. 619 (cigarette); (1906) Armour Packing Co. v. Lacy, 200 U. S. 226, 50 L. Ed. 451 (meat packers); (1909) Southern Oil Co. v. Texas, 217 U. S. 114, 54 L. Ed. 688 (oil and coal).

Constitutionality is presumed. (1895) Hooper v. California, 155 U. S. 648, 39 L. Ed. 297 (insurance).

They are to be reasonably and fairly construed. (1900) De Bary v. Souer, 101 Fed. Rep. 425; (1911) Sesnon v. U. S., 182 Fed.

Rep. 573, 220 U. S. 609. And see notes on construction at § 23, *post*.

It was the province of the States to license, and the earlier use of the word license in the federal legislation led to confusion. The designation "special tax," has been used since 1866, July 13 (14 Stat. 4). Even under the Acts of 1862 and 1864 the license was nothing more than a tax receipt. (1866) License Tax Cases, 5 Wall. 462 (lottery); (1866) *Pervear v. Commonwealth*, 5 Wall. 475 (liquor); (1865) *McGuire v. Commonwealth*, 3 Wall. 387 (liquor); (1865) *Commonwealth v. Holbrook*, 10 Allen, 200 (liquor); (1867) *State v. Delano*, 54 Me. 501 (liquor); (1864) *U. S. v. Riley*, 5 Blatchf. 204 (liquor); (1894) *Plumley v. Mass.*, 155 U. S. 461 (oleomargarine).

Privilege or occupation taxes have from the earliest times been popular (it would be better, perhaps, to say common) sources of revenue in the Southern States; and the reports of the State courts contain much reasoning which will be found to apply to Federal legislation on the same subjects. (1848) *Simmons v. State*, 12 Mo. 268 (State tax on lawyers); (1847) *Carroll v. Mayor*, 12 Ala. 173 (city tax on auctioneers); (1856) *Portland v. O'Neill*, 1 Oreg. 218 (city tax on brokers); (1857) *Gunter v. Leckey*, 30 Ala. 591 (State tax on slave traders); (1872) *St. Louis v. Laughlin*, 49 Mo. 559 (on professions); (1876) *State v. Johnson*, 65 Me. 362 (innkeeper); (1879) *Ex parte City, re Knox*, 64 Ala. 463 (city tax on lawyers).

The District of Columbia has an elaborate scheme of occupation or license taxes, imposed by Congress. Act of July 1, 1902, c. 1352 (32 Stat. 622).

Revised Statutes, section 3243, expressly says that the payment of a Federal special tax shall not authorize any violation of a State law, nor prohibit the imposition of State taxes. See, also, Act of July 1, 1862, c. 119 (12 Stat. 432), § 67; June 30, 1864, c. 173 (13 Stat. 223), § 81; and July 13, 1866, c. 184 (14 Stat. 98). (1909) *Ohio v. Kendle*, 8 O. N. P. N. S. 109.

State and local occupation taxes must not interfere with interstate commerce. (1914) *Browning v. Waycross*, U. S. Supreme Ct., Oct. T., 1913. Nor with foreign commerce. (1914) *Sault Ste. Marie v. International Transit Co.*, U. S. Supreme Ct., Oct. T., 1913.

No State may hinder or burden the Federal government in the lawful exercise of the latter's taxing power. (1910) *Flaherty v. Hanson*, 215 U. S. 515, 54 L. Ed. 307, and cases cited, p. 524.

A State privilege tax on telegraph companies which does not exempt Federal business is unconstitutional. (1912) *Williams v. Talladega*, 226 U. S. 404, 57 L. Ed. 275, reversing 164 Ala. 633.

State privilege taxes may be both for revenue and for regulation, and are limited only by "due process" and the 14th amendment. (1913) *Bradley v. Richmond*, 227 U. S. 477, 57 L. Ed. 603 (private banking); (1900) *Gundling v. Chicago*, 177 U. S. 183, 44 L. Ed. 725 (cigarettes); (1913) *Citizens' Telephone v. Fuller*, 229 U. S. 322, 57 L. Ed. 1206; (1914) *Ohio Tax Cases*, 232 U. S. 576 (railways).

A State (Florida) may not impose an arbitrary and burdensome license tax, State and county, on merchants using any form of profit-sharing coupons. (1913) *Van Deman & Lewis Co. v. Rast*, 214 Fed. Rep. 827.

City ordinances imposing an unreasonable license system on expressmen, truckmen, hackmen, etc., held unconstitutional. (1914) *Adams Express Co. v. New York*, 232 U. S. 14.

As to whether and what contracts may be enforced in default of required license. *Benjamin on Sales* (Bennett's 7th Ed.), Bk. 3, ch. 3, esp. § 538; *Bishop on Contracts*, ch. XVIII.

Many of the cases generally cited turn upon express statutory language or express terms of contracts rather than on any principle. (1869) *Hall v. Bishop*, 3 Daly, 109 (lawyer); (1871) *Tedrick v. Hiner*, 61 Ill. 189, 38 L. R. A. 145 (lawyer); (1871) *Woodward v. Stearns*, 10 Abb. Pr. (N. S.) 395 (broker, with express contract); (1873) *Holt v. Green*, 73 Pa. 200 (commercial broker); (1871) *Larned v. Andrews*, 106 Mass. 435 (merchant); (1874) *Ruckman v. Bergholz*, 37 N. J. L. 437 (real estate agent); but cf. (1892) *Buckley v. Hamason*, 50 Minn. 195, 16 L. R. A. 423; (1885) *Pollard v. Phoenix Ins. Co.*, 63 Miss. 244, where failure to have a merchant's license invalidated fire policy on goods; Cf. (1871) *Larned v. Andrews*, 106 Mass. 435 (a merchant under Act of 1864, c. 173, § 79); (1869) *Aiken v. Blaisdell*, 41 Vermont, 655 (sale of liquor across State line to evade prohibition); (1845) *Smith v. Mawhood*, 14 M. & W. 452 (tobacco).

An express company was, because of a special method of

handling shipments, held to pay a special tax as a liquor dealer, though it never owned the beer sold. (1905) *Western Exp. Co. v. U. S.*, 141 Fed. Rep. 28.

The ordinary C. O. D. shipments do not make the carrier liable. (1902) *U. S. v. Adams Exp.*, 119 Fed. Rep. 240; though the shipper may be required to have a license for the place of delivery. (1885) 23 Fed. Rep. 134.

As to what constitutes carrying on a business. (1898) *Ledbetter v. U. S.*, 170 U. S. 610; (1886) *U. S. v. Rennecke*, 28 Fed. Rep. 847; (1875) *U. S. v. Jackson*, 1 Hughes, 531.

Where special taxes vary with the amount of business done, and a person has paid a higher tax, he may, on establishing his right to a lower classification, recover the excess paid. (1877) *U. S. v. Kaufman*, 96 U. S. 567. See § 3426, R. S.

A wife may continue a husband's business without paying a new tax. T. D. 19026, 19411, of 1898.

A stockholder of a company may not continue business, as in the case of a partnership, after dissolution. T. D. 45, Feby. 17, 1900.

Under the Act of 1864 one professional license did not suffice for a firm. Collection of Circulars, 1871, pp. 156, 158; Special No. 4, July 30, 1864.

Where a brewer's tax was paid by a firm, it was not necessary for the partner who continued after dissolution to pay again. (1889) *U. S. v. Davis*, 37 Fed. Rep. 468; (1878) *U. S. v. Glab*, 99 U. S. 225; (1867) *Spielman v. State*, 27 Md. 520.

A business tax is to be assessed where the business is carried on and not at the residence. (1871) *Bates v. Mobile*, 46 Ala. 158; (1863) *Miner v. Fredonia*, 27 N. Y. 155.

As to sales made away from the place of business, see (1901) *U. S. v. Chevallier*, 107 Fed. Rep. 434; (1909) *De Bary v. Dunne*, 172 Fed. Rep. 940.

But one liquor license covers any number of bars on the same premises. T. D. 142, June 2, 1900; 169, June 29, 1900.

By an executive order, dated Oct. 13, 1914, an interesting scheme of occupation or license taxation was established for the Canal Zone. The special license taxes include "dance," "hand organ," "fortune telling device," "cane rack," "doll rack," "merry-go-round," "trick riders," "peddler," etc.

FIRST.—Bankers.

This paragraph is only slightly altered from the corresponding provision of the Act of 1898, June 13, c. 448, 30 Stat. 448, § 2, subd. 1, and Act of 1901, March 2, c. 806, 31 Stat. 938, § 2, subd. 1; repealed by Act of April 12, 1902, c. 500, 32 Stat. 96. See, also, Act of June 30, 1864, c. 173, 13 Stat. 223, § 79, subd. 1, amended by Act of July 13, 1866, c. 184, 14 Stat. 98, § 9; and Act of July 1, 1862, c. 119, 12 Stat. 432, § 64, subd. 1.

The definition of a banker here given is that of R. S. § 3407 (in connection with tax on circulation). (1876) *Selden v. Equitable Trust Co.*, 94 U. S. 419; (1875) *Warren v. Shook*, 91 U. S. 704; (1884) *U. S. v. Bank of Montreal*, 21 Fed. Rep. 236; (1866) *U. S. v. Farmers' L. & T. Co.*, 25 Fed. Cas. No. 15070.

Having a place of business, buying and selling stocks for customers, as a business, and using capital in this business, constituted a man a banker. (1890) *Richmond v. Blake*, 132 U. S. 592.

"Having a place of business where deposits are received and paid out on checks, and where money is loaned upon security, is the substance of the business of a banker." *Warren v. Shook*, *supra*.

For definition of banker, see (1872) *Oulton v. Savings Inst.*, 17 Wall. 118.

Capital under the Act of 1864 did not include surplus earnings. (1866) *Mechanics, etc., Bank v. Townsend*, 5 Blatchf. 315; (1906) *Merchants' N. Bk. v. U. S.*, 42 Ct. Cls. 6.

The Act of 1872, June 6, c. 315, 17 Stat. 256, interpreted "capital employed."

"Capital" was held not to include money temporarily borrowed by a banker in the ordinary course of his business to meet an emergency, but "the property taken from other investments or uses and set apart for and invested in the special business, and in the increase, proceeds and earnings of which property beyond expenditures incurred in its use, consist the profits made in the business." (1874) *Bailey v. Clark*, 21 Wall. 284. But, under the Act of 1898, the Commissioner ruled that money borrowed or received on special deposit for use as capital was taxable as capital. T. D. 19783, July 28, 1898; 20154, Oct. 5, 1898; 20645, January 27, 1899.

The earlier decisions doubtless led to the insertion in the Act of 1898 of the express provision for including surplus with capital. And the tendency of the rulings on the Act of 1898 to exclude certain undivided profits probably caused their express inclusion in the present Act.

By the Act of 1866 there was a tax on dividends and profits added to surplus. (1873) *Dollar Sav. Bk. v. U. S.*, 19 Wall. 227.

Surplus means all of assets over liabilities, and therefore includes undivided profits. (1902) *Leather Mfrs. Bk. v. Treat*, 116 Fed. Rep. 774, affirmed (1904) 128 Fed. Rep. 262.

But, under the Act of 1898, a trust company's accumulated profits, invested in securities, were not part of the capital surplus. (1909) *Central Trust v. Treat*, 171 Fed. Rep. 301; (1911) 185 Id. 760; (1909) *Farmers' L. & T. v. Treat*, 171 Id. 302; (1911) 185 Id. 760.

A company investing its capital in real estate, bonds and mortgages and dealing in these securities, is not a banker. (1876) *Selden v. Equitable Trust*, 94 U. S. 419; (1877) *Oregon, etc., Trust v. Rathbun*, 5 Sawyer, 32.

A fidelity and deposit company, doing a banking business solely with its deposits, and having its capital and surplus invested in realty and securities, was ruled to pay as a bank on the entire amount, under the Act of 1898. T. D. 21421, July 25, 1899; cf. *Central Trust v. Treat*, *supra*.

Margins left with stock brokers are not properly check accounts. (1874) *Clark v. Bailey*, 12 Blatchf. 156, affirmed 21 Wall. 284; but the question raised as to whether such a broker may not make banker's loans was answered by T. D. 21152, May 12, 1899; a broker who keeps no checking accounts and who loans on stocks only in the sense that he temporarily supplements customers' margins to carry stocks which he in turn hypothecates for loans, is not doing a banking business, even though he have some capital engaged.

On default of a proper return for taxation, the collector may summon persons and books for examination under R. S. § 3173.

An attachment may issue as for a contempt for refusal to answer questions. R. S. § 3175; (1870) *In re Chadwick*, 1 Lowell, 439; (1900) *In re Kinney*, 102 Fed. Rep. 468; *Landram v. U. S.*, 16 Ct. Cls. 74, 85; *Lippman's case*, 3 Ben. 95.

Examination of books under the Act of 1864, section 14, was not an infringement of a constitutional right. (1868) *In re Lippmann*, 3 Ben. 95; (1871) *In re Strouse*, 1 Sawyer, 605.

Under the Act of 1868, July 20, section 49, an officer might examine bankers' and brokers' books without declaring his purpose. (1870) *Stanwood v. Green*, 2 Abb. U. S. 184.

Cf. § 23, *post*, as to records required to be kept, returns made, etc.

Other illustrative Treasury Decisions, "T. D.," under the Act of 1898:

(20114) Sept. 28, 1898. The provision for estimating the tax on the basis of the preceding year was ruled to apply only to such banks as had previously been in business, leaving a new bank to pay only the flat tax. An Act of March 2, 1901, amended the paragraph as it stood in 1898 by inserting, "In the case of bankers who were not in business in the preceding fiscal year the tax shall be computed on the capital at the time of commencing business." The present Act restores the earlier reading by omitting the amendment of 1901.

(19758) July 25, 1898; (20114) Sept. 28, 1898. A bank beginning business during the first month of the law's operation must make return and pay the full year's tax; at any later time during the year, pro rata for the remainder.

(20336) Nov. 16, 1898. A new organization by the same persons during the year is taxable as a new bank.

(20786) March 2, 1899. But a mere change of name does not require a new tax to be paid.

(20419) Dec. 13, 1898. Banks which have separately paid the tax and are subsequently during the year consolidated, must pay a further pro rata tax for the remainder of the year.

(20723) Feb. 18, 1899. Where a banker is also a broker, the value of a seat on the exchange is not to be included in estimating the banking capital.

A State bank becoming a national bank, with no other change, need not pay a new tax. T. D. 123, May 11, 1900.

Lending money on goods and chattels is not banking. T. D. 20344, June 25, 1898. And see (1879) *New Orleans v. Metrop. Loan*, 31 La. An. 310.

SECOND.—Brokers.

Cf. Act. of June 13, 1898, § 2, par. 2; March 2, 1901, § 2, par. 2, repealed April 12, 1902, § 2; June 30, 1864, § 79, par. 9, amend. by March 3, 1865, and July 13, 1866; Act of July 1, 1862, § 64, par. 13.

This tax was amended out of the Act by the Senate, presumably in view of the disturbance of the brokerage business by the long closing of practically all exchanges, a measure adopted to avoid a threatened crash when all Europe became involved in the war and there was danger of "dumping." The House prevailed in conference, and the tax was restored.

"Ordinarily the term 'broker' is applied to one acting for others; but the part of the definition which speaks of purchases and sales for himself is equally important as that which speaks of sales and purchases for others. All parts of the definitions are qualified by the words 'whose business it is.' Thus, if A. B. has \$10,000 which he desires to invest, and purchases United States stock, or State stock, or any other securities, he does not thereby become a broker. Nor if he owns \$10,000 of U. S. stock which he wishes to sell to raise money to pay his debts or because he is not satisfied with six per cent. interest, is he thereby made a broker. It is only when making sales and purchases is his business, his trade, his profession, his means of getting his living or of making his fortune, that he becomes a broker within the meaning of the statute. Nor is it believed that a sale, by one doing a banking business only, of a security received by him for the repayment of a legitimate loan, would make him a broker and subject to the tax. This would not be deemed an act of brokerage, either under the statute or upon general principles, of law. When it is his business the statute properly holds all such acts, whether in the name of himself ostensibly or in the name of others, as the acts of a broker. The danger and the facility for evasion of the statute furnish excellent reasons for the adoption of this provision." (1875) *Warren v. Shook*, 91 U. S. 704, 710. See (1893) *Jackson v. Hough*, 38 W. Va. 237.

Persons who buy and sell stocks, etc., on their own account were held brokers. (1874) *U. S. v. Cutting*, 3 Wall. 441; (1866) *Clark v. Gilbert*, 5 Blatchf. 330.

Brokers doing a speculative business in mining stocks on their own account are taxable, though they do no commission business for others. Treas. Dec. (19562) June 23, 1898.

A note broker is taxable, though operating only for his own account. Treas. Dec. (19692), July 14, 1898; (20549) Jany. 16, 1899.

Bankers who buy and sell government securities for themselves are not brokers. (1874) U. S. v. Fisk, 3 Wall. 445.

But bankers acting also for others are brokers. 11 Opin. Atty.-Gen. 482.

Mere inactive membership in a mining or stock exchange does not involve the tax. T. D. (19567) June 24, 1898. But an inactive member who operates through another active member and splits commissions is liable. T. D. (19943) Aug. 24, 1898.

The mere lending of money for others, where the borrower pays a commission, is not taxable as a brokerage business. T. D. (19894) Aug. 16, 1898.

Country merchants who occasionally lend money on notes or mortgages are not brokers. T. D. (19940) Aug. 23, 1898.

A land agent who also, as a material part of his business, buys notes for himself and others, is a taxable broker. T. D. (19757) July 25, 1898; (20028) Sept. 8, 1898.

The mere incidental negotiating of mortgage loans by a person having another regular business does not constitute him a broker. T. D. (19872) Aug. 10, 1898; (20262) Oct. 27, 1898; (20544) Jany. 11, 1899.

But one who, as agent for others, makes a business of negotiating the sale of mortgages on commission is a broker. T. D. (20676) Feb. 4, 1899.

Lending money on mortgage is not taxable as brokerage, but the business of selling mortgage securities so taken requires a broker's tax to be paid. T. D. (21620) Sept. 22, 1899.

A broker's agent operating in another place than the main office, transmitting orders and remitting money to his principal, is taxable as a broker. T. D. (19881) Aug. 10, 1898; (19615) July 1, 1898.

In Circular No. 508, Aug. 8, 1898, T. D. (19843), it was ruled that no tax was required for a broker's branch having a clerk who merely received and transmitted orders. This was intended to apply only to certain small offices such as some of these

maintained in hotel lobbies, and the Commissioner later issued two circulars carefully prescribing the exception and requiring a tax on every branch office having the paraphernalia of a broker's office. T. D. (20374) Nov. 25, 1898; (20604) Jany. 23, 1899.

Cf. Liquor dealer cases where a branch was not a separate concern. (1900) U. S. v. Chevallier, 102 Fed. Rep. 125; 107 id. 434; but see, also, liquor case; (1909) De Bary v. Dunne, 172 Fed. Rep. 940.

The mere purchase of county, school and State orders at a discount was first ruled not to constitute a man a broker. T. D. (19885) Aug. 11, 1898. But this was later modified to require a tax of anyone who made a business of buying such warrants and fee bills of witnesses. Appendix to Vol. I of the Compilation of Decisions (1899); (21647) Oct. 10, 1899. "It is only when making sales and purchases as his business, his trade, his profession, his means of getting his living or making his fortune, that he becomes a broker within the meaning of the statute." (1875) Warren v. Shook, 91 U. S. 704.

The rulings on what constitutes the selling of exchange are not a sure guide, inasmuch as the questions often obviously make an imperfect statement of the facts. General inquiries were answered to the effect that all selling of exchange was taxable, and special efforts were made to enforce the law against express companies and others which competed with banks. T. D. (20593-20594) Jany. 19, 1899; (20717) Feb. 14, 1899; (20785) March 1, 1899; (20790) March 6, 1899; (21075) April 28, 1899; (21709) Oct. 31, 1899.

But a steamship company which sold its checks to be sent abroad and individuals who occasionally sold their own checks or drafts were not taxed. T. D. (20026) Sept. 8, 1898; (20365) Nov. 21, 1898; (19937) Aug. 23, 1898; (21286) June 20, 1899. The question turns on what is exchange and the extent to which the transactions are a material part of the business. See A. G. O. XXIII, 139, as to express companies' money order business.

A broker doing business in both stocks and grain or produce must pay a special tax in each capacity. T. D. (19870) Aug. 9, 1898; (19998) Sept. 1, 1898; (20167) Oct. 11, 1898; (21607) Sept. 14, 1899.

Where a broker who has paid the tax goes into a partnership during the year, the new firm must also pay pro rata for the year, without rebate to the man who paid individually. T. D. (20160) Oct. 10, 1898. It was, however, ruled that where one partner continued a liquor business of a dissolved firm, taking in no new partner, he did not require to pay again. T. D. (20346) Nov. 19, 1898.

A person who buys and deals in life insurance contracts to the extent of making a business of it is dealing in securities and is a broker. T. D. (20235) Oct. 22, 1898.

A railway agent near a frontier who in the regular course of business exchanges American and foreign money is not a broker. T. D. (21521) Aug. 22, 1899.

A broker who buys and sells stocks in his own name on margin for another person and at the latter's risk, was a broker under the Act of June 30, 1864, § 99. (1872) *Northrup v. Shook*, 10 Blatchf. 243.

As to brokerage under a State license law (1885) *State v. Duncan*, 16 Lea. Tenn. 75; (1893) *Jackson v. Hough*, *supra*.

THIRD.—Pawnbrokers.

This paragraph may be traced through the Act of July 1, 1862, c. 119, 12 Stat. 432, § 64, subd. 7; Act of June 30, 1864, c. 173, 13 Stat. 223, § 79, subd. 10; Act of July 13, 1866, c. 184, 14 Stat. 98, § 9; Act of June 13, 1898, c. 448, 30 Stat. 448, § 2, subd. 3; Act of March 2, 1901, c. 806, 31 Stat. 938, § 2, subd. 3, repealed by Act of April 12, 1902, c. 500, 32 Stat. 96, § 2.

The tax in 1898 was \$20.

A pawnbroker does not evade or avoid the tax by buying articles without issuing tickets but with a verbal agreement to resell. Treas. Decis. Dec. 15, 1898 (20439).

An occasional transaction in the nature of a loan on a pledge does not constitute pawnbroking. Treas. Decis. Aug. 8, 1898 (19843).

An earlier ruling making pawn tickets liable to stamp tax as warehouse receipts was revoked or modified to apply only to cases where the deposit was clearly as a pledge and not for storage. Treas. Decis. Aug. 23, 1899 (21524).

A State banking license did not cover pawnbroking. (1879) *New Orleans v. Metrop. Loan*, 31 La. An. 310.

A pawnbroker's ticket or check under a California statute required a stamp under the Act of 1864. (1870) *U. S. v. Smith*, 1 Saw. 192.

Lending money on warehouse receipts, without getting possession of the goods, is not pawnbroking. T. D. 198, Aug. 15, 1900.

FOURTH.—Commercial Brokers.

This paragraph is practically as it had been in the earlier Acts of 1862 (12 Stat. 713); 1864 (13 Stat. 223); 1866 (14 Stat. 471); 1898 (30 Stat. 448); repealed by 1901 (31 Stat. 938).

This was the first of the 1898 special taxes to be repealed; yet the finance chairman of the Senate, in insisting upon its reimposition here, twice stated, as an argument, that it had remained to the end in the Spanish war emergency taxation. He owned that the field of the broker's activities was "right broad," but estimated there were only about 12,000 taxable brokers of this class.

A chief difficulty in applying it successfully has always been that many transactions of the class sought to be embraced were not really such as properly could be included among brokers' operations. The form of language used does not cover merchants as such. A broker, properly speaking, only negotiates a sale; he does not actually sell, as a merchant does.

A commission merchant or factor may operate in his own name and he gets possession of the thing sold. A broker ordinarily does neither. Where men made sales on commission in their own names, at their own store, had the goods and shipped them to customers, they were commission merchants, not brokers. (1874) *Slack v. Tucker*, 23 Wall. 321, reversing 1 Holmes, 485 (under Act of 1864).

While the present Act was in the Senate the point above mentioned was met by adding a new paragraph to the section and taxing commission merchants as such. See § 3, subd. tenth, *post*, and notes.

The Act of 1866, July 13, c. 184, 14 Stat. 98, § 9, did not apply

to brokers who made purchases, but to those who made sales. (1872) *Stockdale v. Doswell*, 16 Wall. 156.

A State tax on the business of real estate broker is constitutional. (1873) *Wiltse v. State*, 8 Heisk. (Tenn.) 544.

But real estate brokers, as such, were not deemed covered by the Act of 1898. T. D. 19755, July 23, 1898.

Under the Act of 1866 a market gardener selling his products from his wagon in the city market was held a produce broker. (1870) *U. S. v. Simons*, 1 Abb. 470, 7 Phila. 607.

Occasional transactions in cattle by a farmer do not make him a broker. (1867) *U. S. v. Kenton*, 2 Bond, 87.

Members of a board of trade who are "scalpers or speculators," operating solely for themselves, are not commercial brokers. The words, "for themselves or others," in the paragraph regarding stock brokers are not found in this paragraph. T. D. Oct. 14, 1898 (20198).

A salesman travelling at his own expense taking and forwarding orders to various makers for cigars sold on sample is a commercial broker. T. D. June 27, 1898 (19575).

A woman who does "shopping" for others and gets a discount for her trouble is not a broker; "installment purchasers," however, who do not handle the goods but maintain a credit in stores against which their customers make direct purchases, are taxable. T. D. Aug. 10, 1898 (19884).

If diamonds on memorandum are obtained on credit and sold by the dealer for his own account, it is not brokerage; but if the business is really a selling of the consignor's goods on commission it is taxable. T. D. Oct. 11, 1898 (20164).

The mere selling of steamship passage tickets is not such negotiation of business for the owners of vessels as to make the agent a broker. T. D. Feb. 14, 1899 (20717-20718).

See T. D. 20725, under subd. fifth, *infra*.

It was intimated in Congress that many brokers, to encourage business, would also pay the stamp tax on the sale agreements negotiated by them.

Cf. State cases. (1873) *Blackford v. State*, 8 Heisk. (Tenn) 538 (real estate broker); (1872) *State v. Field*, 49 Mo. 270 (broker); (1884) *Braun v. Chicago*, 110 Ill. 186 (brokers).

A State tax of \$25 a week on all drummers not having a licensed business in the taxing district, exceeded the right of the

State to license vocations within its own borders. (1886) *Robbins v. Shelby County*, 120 U. S. 489.

FIFTH.—Custom House Brokers.

Act of June 30, 1864, c. 173, 13 Stat. 223, § 79, subd. 15; July 13, 1866, c. 184, 14 Stat. 98, § 9; June 13, 1898, c. 448, 30 Stat. 448, § 2, subd. 5; March 2, 1901, c. 806, 31 Stat. 938, § 2, subd. 4, repealed by April 12, 1902, c. 500, 32 Stat. 96, § 2.

Must pay tax in each city where they do business, i. e., every branch office is taxed. R. S. § 3235; T. D. 19576, June 27, 1898.

A bill of sale of a vessel is a "custom house paper," but a lawyer who occasionally draws one is not a broker. T. D. 20321, Nov. 12, 1898.

T. D. 20033, Sept. 13, 1898, answers several queries on this paragraph.

"Other business for owners," under subd. fourth, does not permit a commercial broker to arrange entries, etc., without paying a tax as a custom house broker. T. D. 20725, Feby. 20, 1899.

SIXTH.—Proprietors of Theatres, etc.

Cf. Act of 1862, July 1, c. 119, § 64, subd. 17, 12 Stat. 432; Act of 1864, June 30, c. 173, § 79, subd. 37, 13 Stat. 223; Act of 1866, July 13, c. 184, § 9, 14 Stat. 98; Act of 1898, June 13, c. 448, § 2, subd. 6, 30 Stat. 448; Act of 1901, March 2, c. 806, § 2, subd. 5, 31 Stat. 938, repealed by Act of 1902, April 12, c. 500, § 2, 32 Stat. 96.

The House bill provided a flat rate for theatres in cities of a certain population, as was the method in the Act of 1898; but the Senate made a classification according to seating capacity.

It had been held that the "proprietor" of a still was the person who controlled it, i. e., the lessee, not the lessor. (1878) *U. S. v. Van Slyke*, 8 Biss. 227. "The distiller, owner, or person having possession." R. S. § 3251. And the present Act follows the Act of 1898 in requiring payment by the lessee of a theatre.

The exception here (as the second proviso in par. 8) is an attempted expression of the liberal spirit in which such tax

laws have always been enforced as to church, school, lodge, grange, lyceum and all purely educational, social, religious and charitable entertainments under non-money-making management.

Many halls pompously called theatres will escape this tax and fall under par. 8; but the larger theatres properly so called which have latterly been given over chiefly, though not exclusively, to "movies" and "varieties," will doubtless be left in this class.

SEVENTH.—Circuses.

EIGHTH.—Other Exhibitions.

1862, c. 119, July 1, § 64, subd. 18; 1864, c. 173, June 30, § 79, subd. 38; 1866, c. 184, July 13, § 9; 1898, c. 448, June 13, § 2, subd. 7 and 8; 1901, c. 806, March 2, § 2, subd. 6 and 7; 1902, c. 500, April 12, § 2, repeal.

A circus is pretty well defined in general acceptance of language; and, in the spirit of the exceptions in paragraphs 6 and 8, it is not likely that a "society circus," or tented "horse play," will be taxed. It is best to inquire of the collector or Commissioner, but it would appear to be extremely important, in such inquiry, to state the facts adequately. Many rulings in the compilations, even where they are replies to lawyers, indicate that unfavorable decisions were called out by carelessly formulated questions.

Ordinary local ball games were not assessed, T. D. 20228, Oct. 19, 1898; but professional ball in its larger forms undoubtedly will be; and general athletic fields. T. D. 20190, Oct. 12, 1898.

Theatres and halls used as cafes with vaudeville, no entrance fee being charged, were taxed. T. D. 132, May 23, 1900.

"Cabaret" shows in restaurants and variety shows in beer halls and garden cafes, where they consist in anything else than bad music, will be included. There is little hope that the music alone will attract a tax!

A citizens' street fair was not assessed. T. D. 251, Nov. 26, 1900.

NINTH.—Bowling Alleys, etc.

Cf. 1862, c. 119, 12 Stat. 432; 1864, c. 173, 13 Stat. 223; 1866, c. 184, 14 Stat. 98; 1898, c. 448, 30 Stat. 448; 1901, c. 806, 31 Stat. 938; 1902, c. 500, 32 Stat. 96, repeal.

This obviously is not intended to apply to legitimate private clubs.

"Any person who appears to be, or for the time being is, in the possession and control of a place or building where a billiard table is kept for public use, is *prima facie* the proprietor of a billiard-room and liable to pay this special tax." (1871) U. S. v. Howard, 1 Sawyer, 507.

A safety lynn table is a pool table. T. D. 173, July 6, 1900.

A tivoli table used for pool or billiards requires a tax. T. D. 205, Aug. 28, 1900.

A tax paid for bowling alleys does not cover pool tables which are substituted for the alleys. T. D. 231, Oct. 12, 1900.

Tables called Klondike, Stevens, and Manhattan, and peg pool tables are included. T. D. 259, Dec. 21, 1900.

TENTH.—Commission Merchants.

This paragraph is new. The House bill (H. R. 18891) retained only the former tax on commercial brokers, but the Senate, on the special recommendation of its Finance Committee (Report No. 813) added this new classification to meet the rulings and decisions which had tended to exclude a large class of mercantile agents. The after-thought tacking of so important a measure at the end of a schedule out of its proper place, is a characteristic illustration of the hasty and unreasoned manner in which much legislation is patched together.

Under the Act of 1898 there was a good deal of contention as to what constituted the business of a mercantile commercial broker. Numerous rulings were made which disclosed no real principle until December 12, 1898, in T. D. 20417, the Commissioner made a settled ruling that a commercial broker was one who, without being an exclusive agent, made a business of negotiating sales or purchases for others on commission without acquiring title or possession of the goods.

Mill agents who receive and forward orders, making their

own bills and settlements for goods which are shipped direct from the mills to the customers are brokers, unless they are agents exclusively representing certain houses. T. D. Aug. 23, 1898 (19938); Aug. 26, 1898 (19966); Sept. 28, 1898 (20117); Oct. 11, 1898 (20168); Oct. 12, 1898 (20189); Oct. 25, 1898 (20241).

Cf. the notes on paragraph 4 of this section, Commercial brokers.

Consignment commission merchants (tobacco, cotton, cattle etc.) and commission auctioneers are not commercial brokers where they get actual possession of the things they sell for the owner. T. D. July 27, 1898 (19766); Oct. 11, 1898 (20164). But negotiating purchases and sales without consignment to the agent who merely negotiates on a commission is a brokerage business. T. D. Jany. 19, 1899 (20592).

A person who receives goods into his possession and sells and delivers them on commission is, it appears, not to be regarded as a commercial broker. (1874) *Slack v. Tucker*, 23 Wall. 321, reversing 1 Holmes, 485 (Act of 1864); T. D. Nov. 7, 1898 (20295), as to book agent.

The Roman tax of one per cent. on auction sales, *Vectigal* (*centesima*) *rerum venalium*, in the reign of Augustus, is one of the earliest known excise laws.

TOBACCO DEALERS AND MANUFACTURERS.

Sec. 4. That on and after November first, nineteen hundred and fourteen, special taxes on tobacco dealers and manufacturers shall be and hereby are imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Dealers in leaf tobacco whose annual sales or transfers do not exceed fifty thousand pounds shall each pay \$6. Dealers in leaf tobacco whose annual sales or transfers exceed fifty thousand and do not exceed one hundred thousand pounds shall pay \$12,

and if their annual sales or transfers exceed one hundred thousand pounds shall pay \$24: *Provided*, That dealers in leaf tobacco whose annual sales or transfers do not exceed one thousand pounds shall be exempt from the tax herein imposed on dealers in leaf tobacco.

Dealers in tobacco, not specially provided for in this section, whose annual receipts from the sale of tobacco exceed \$200, shall each pay \$4.80 for each store, shop, or other place in which tobacco in any form is sold.

Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, cigars, or cigarettes shall be regarded as a dealer in tobacco: *Provided*, That no manufacturer of tobacco, snuff, cigars, or cigarettes shall be required to pay a special tax as a dealer in manufactured tobacco, snuff, cigars, or cigarettes for selling his own products at the place of manufacture.

Manufacturers of tobacco whose annual sales do not exceed one hundred thousand pounds shall each pay \$6.

Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay \$12.

Manufacturers of tobacco whose annual sales exceed two hundred thousand and do not exceed four hundred thousand pounds shall each pay \$24.

Manufacturers of tobacco whose annual sales exceed four hundred thousand and do not exceed one million pounds shall each pay \$60.

Manufacturers of tobacco whose annual sales exceed one million and do not exceed five million pounds shall each pay \$300.

Manufacturers of tobacco whose annual sales exceed five million and do not exceed ten million pounds shall each pay \$600.

Manufacturers of tobacco whose annual sales exceed ten million and do not exceed twenty million pounds shall each pay \$1,200.

Manufacturers of tobacco whose annual sales exceed twenty million pounds shall each pay \$2,496.

Manufacturers of cigars whose annual sales do not exceed one hundred thousand cigars shall each pay \$3.

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay \$6.

Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay \$12.

Manufacturers of cigars whose annual sales exceed four hundred thousand and do not exceed one million cigars shall each pay \$30.

Manufacturers of cigars whose annual sales exceed one million and do not exceed five million cigars shall each pay \$150.

Manufacturers of cigars whose annual sales exceed five million and do not exceed twenty million cigars shall each pay \$600.

Manufacturers of cigars whose annual sales ex-

ceed twenty million and do not exceed forty million cigars shall each pay \$1,200.

Manufacturers of cigars whose annual sales exceed forty million cigars shall each pay \$2,496.

Manufacturers of cigarettes whose annual sales do not exceed one million cigarettes shall each pay \$12.

Manufacturers of cigarettes whose annual sales exceed one million and do not exceed two million cigarettes shall each pay \$24.

Manufacturers of cigarettes whose annual sales exceed two million and do not exceed five million cigarettes shall each pay \$60.

Manufacturers of cigarettes whose annual sales exceed five million and do not exceed ten million cigarettes shall each pay \$120.

Manufacturers of cigarettes whose annual sales exceed ten million and do not exceed fifty million cigarettes shall each pay \$600.

Manufacturers of cigarettes whose annual sales exceed fifty million and do not exceed one hundred million cigarettes shall each pay \$1,200.

Manufacturers of cigarettes whose annual sales exceed one hundred million cigarettes shall each pay \$2,496.

In arriving at the amount of license tax to be paid hereunder, and in the levy and collection of such tax, each person, firm, or corporation engaged in the manufacture of cigars, cigarettes (including little cigars), or tobacco shall be considered and deemed a single manufacturer.

And every person who carries on any business or occupation for which special taxes are imposed by this Act, without having paid the special tax herein provided shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That the special taxes imposed by this Act and payable during the special tax year ending June thirtieth, nineteen hundred and sixteen, shall be collected and paid proportionately for the period during which such taxes shall remain in force during said year.

Tobacco Dealers and Manufacturers.

Though separated as a new section, this really continues section 3. In form this section is but slightly modified from the Act of 1898, c. 448, which revived the special tobaccoist taxes that were repealed Oct. 1, 1890, § 26, out of R. S. § 3244; but the extended classification amounts to a great change. The classification of manufacturers according to annual sales was adopted by the Act of 1898. The 1898 special taxes were repealed by chapter 500 of 1902 April 12.

A manufacturer of tobacco is defined by the Act of Aug. 28, 1894, 28 Stat. 509. It does not include cigar making.

A dealer in leaf tobacco is defined by R. S. § 3244, as amended by the Act of March 1, 1879, 20 Stat. 327, § 14, and the Act of March 3, 1883, 22 Stat. 488. And see the Act of Aug. 5, 1909, 36 Stat. 110.

The present Act does not increase, as did the Act of 1898, the tax on tobacco, cigars, cigarettes and snuff, i. e., on the products themselves. The extant laws are found in R. S. §§ 3355-3386a, as amended. The increase in 1898 was held constitutional. (1902) *Patton v. Brady*, 184 U. S. 608.

The minimum manufacturer's tax in 1898 was \$12. The tax for the same class is now \$6, and a new general class of "deal-

ers in tobacco" (distinct from "dealers in leaf") pays \$4.80 for sales exceeding \$200 a year. It is this flat tax which must be paid by every ordinary small cigar store. Questions may arise, in view of the definition here given of dealer, as to the considerable class of persons "whose business" is something else but who make substantial incidental sales of tobacco. As to what constitutes being in business, see § 3, *ante*.

The Senate amendment, inserting "for each store, etc.," merely makes more certainly applicable the principle of R. S. § 3235 as interpreted and applied to similar cases.

The new classification of manufacturers was intended as "a reform in the direction of fair play, toward equalizing the burden of this tax." The new higher classes were inserted to apply to a very small number of large makers; and, large as the highest rate seems, it was said in the senate that the small maker would still pay about five times as much in proportion. Cong. Rec. p. 18334.

Revised Statutes, § 3244, provides for the registration of cigar makers, but it is deemed obsolete, as the provision was evidently left in the law by oversight when other portions were repealed. A record of factories is kept under § 3389. They paid a special tax before October 1, 1890, and under the Act of June 13, 1898, repealed April 12, 1902.

Farmers and growers of tobacco are not manufacturers. Act of Aug. 28, 1894, 28 Stat. 509, *proviso*. All restrictions on them are expressly removed by the Act of Oct. 1, 1890, 26 Stat. 618, as amended by § 69 of the Act of Aug. 28, 1894. A farmer or producer is not a dealer when he sells leaf tobacco to manufacturers, and unstemmed tobacco in natural leaf is not taxed. Act of Aug. 5, 1909, 36 Stat. 110.

Employers who, as an accommodation, distributed manufactured tobacco to their workmen in a lumber camp, charging them cost prices, were held taxable dealers. (1881) U. S. Vinson, 8 Fed. Rep. 507.

The present Act, while it revives the special taxes on dealers and makers, does not, as did the Act of 1898, increase the taxes on the products, although an effort to do so was made in the Senate. Tobacco products have regularly been taxed since 1862, the rates and some administrative details having been changed by various Acts. The present rates are found in R. S. § 3368, amended by 36 Stat. 109, Aug. 5, 1909 (for tobacco and snuff)

and in R. S. § 3394, amended by 36 Stat. 110, same Act (for cigars and cigarettes).

At the last minute the Senate inserted the word "transfers."

The clause "In arriving, etc.," was an after-thought of Congress. It makes it unnecessary for a maker of several sorts of tobacco articles to pay a tax for each.

PENALTY FOR FAILURE TO PAY SPECIAL TAX.

The last paragraph of § 4 is one of the lost or dislocated provisions of legislation which are sometimes found (either by a complete reading or with the aid of an index), and which illustrate the haphazard methods of lawmakers. When somebody discovers that something has been "left out," it is arbitrarily "stuck in." Or if, by a suggested insertion or rearrangement, the parts no longer fit, the patch-work is permitted to stand for want of time or inclination to correct the defect. This paragraph, as it is officially printed, seems to be but a part of the provisions for the special taxation of tobaccoists; but it undoubtedly applies, with equal force, to *all* the special taxes enumerated in sections 3 and 4. Its prohibition and penalties are the same as in § 4 of the Act of 1898.

By the Act of 1862 a person who carried on a taxable occupation without a license forfeited three times the tax (§ 59). In 1863 (ch. 74, § 24) the penalty for knowingly offending might be two years. In 1864 (ch. 173, § 73) it was prison or fine, or both. In 1867 (ch. 169) it was a fine for all except tobacco and liquor dealers for whom it might be two years. In 1870, July 14, ch. 255, the most of the special taxes were repealed, except liquor and tobacco. The Act of 1898 revived many of them, as seen in the preceding notes.

What is "carrying on the business?" (1886) *U. S. v. Rennecke*, 28 Fed. Rep. 847 (liquors); (1909) *Cuzner v. Calif. Club*, 155 Cal. 303, 20 L. R. A. U. S. 1095, a bona fide social club not business; (1912) *Easterbrook v. Hebrew Ladies' Orph. Soc.*, 85 Conn. 289, 41 L. R. A. U. S. 615, an orphans' home not a business; (1909) *Atlantic Postal, etc., Co. v. Savannah*, 133 Ga. 66, city license on local telegraph; (1908) *Ellis v. State*, 5 Ga. App. 615, laborer who sells lemonade on one Sunday does not violate the Sabbath law; (1905) *Vanderbilt Univ. v. Cheney*, 116 Tenn. 259, renting college property where the income is used for college purposes; (1902) *U. S. v. Thomas*, 115 Fed. Rep. 207, af-

firmed 192 U. S. 363; (1913) Abrast Realty Co. v. Maxwell, 206 Fed. Rep. 333; (1912) McCoach v. Minehill, etc., Co., 228 U. S. 295, 57 L. Ed. 842; (1910) Flint v. Stone Tracy Co., 220 U. S. 107, 55 L. Ed. 389; (1910) Zonne v. Minneapolis Synd., 220 U. S. 187, 55 L. Ed. 428; (1914) Wilkes-Barre, etc., Co. v. Davis, 214 Fed. Rep. 511.

ADHESIVE STAMPS.

Sec. 5. That on and after the first day of December, nineteen hundred and fourteen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

And there shall also be levied, collected, and paid, for and in respect to the preparations, matters, and things mentioned and described in Schedule B of this Act manufactured, sold, or removed for sale, the several taxes or sums of money set down in words or figures against the same, respectively, or otherwise specified or set forth in Schedule B of this Act.

Adhesive Stamps.

Section 5 is the general paragraph of imposition in broad terms. It is essentially a re-enactment of § 6 of the Act of

1898, June 13, which was amended by March 2, 1901, and repealed April 12, 1902. Practically the same clause is found in June 30, 1864, § 151, and July 1, 1862, § 94.

As to construction and interpretation, see § 23, *post*.

A State court's decision as to amount of stamps necessary is not reviewable by a federal court. (1866) *Campau v. Lewis*, 3 Wall. 106.

As to what alterations or new matter on stamped instruments necessitate restamping, where substantial. (1827) *Reed v. Deere*, 7 Barn. & C. 261; (1809) *Knill v. Williams*, 10 East. 431; (1812) *Bathe v. Taylor*, 15 East. 412.

Minor changes and corrections not involving vitality. (1801) *Kershaw v. Cox*, 3 Esp. N. P. C. 246 (insertion of "to order" in a bill of exchange), case often followed; (1828) *Steele v. Spencer*, 1 Peters, 552.

Burden of proof is on claimant under the instrument. (1847) *Waring v. Smyth*, 2 Barb. Ch. 119; (1839) *Herrick v. Malin*, 22 Wend. 388.

As to when a letter is equivalent to a formal instrument. (1866) *Crocker v. Foley*, 13 Allen, 376; (1868) *Boyd v. Hood*, 57 Pa. 98; (1818) *Orford v. Cole*, 2 Starkie, 351 (a promise of marriage, value not measurable). Cf. (1870) *Mercer v. Mercer*, 29 Iowa, 557 (conveyance solely for love and affection).

A joint and several agreement requires only one stamp. (1867) *Ballard v. Burnside*, 49 Barb. 102. See (1811) *Davis v. Williams*, 13 East. 232.

A contract embodied in two papers requires one stamp. (1871) *Bowker v. Goodwin*, 7 Nev. 135.

An unstamped instrument may be the subject of forgery. (1899) *Thomas v. Texas*, 40 Tex. Crim. App. 562, 46 L. R. A. 454 (order to pay, under Act of 1898).

Where the apparent date of an instrument is not the actual time of making, the latter determines whether it must be stamped. (1866) *Willey v. Robinson*, 13 Allen, 128.

The Act of 1862 was held not to be retroactive in requiring stamps on papers. (1867) *Bayly v. McKnight*, 19 La. Ann. 321. Cf. (1866) *McLearn v. Skelton*, 18 La. Ann. 514.

As to penalties for omission, etc., see the following sections; and as to the various instruments affected, see the respective separate subdivisions under Schedule A, *post*.

Generally speaking, courts will not take notice of the revenue

laws of other countries. (1775) *Holman v. Johnson*, 1 Cowper, 341; (1823) *James v. Catherwood*, 3 Dowling & R. 190; (1806) *Ludlow v. VanRensselaer*, 1 J. R. N. Y. 96; *Tilsley on Stamp Laws*, 301; *Collins on Stamp Laws*, 440.

Under the stamp tax Act of 1864, in a litigation as to whether a memorandum check was taxable, the court gave the following "few simple rules:"

1. Instruments described in technical language, or in terms especially descriptive of their own character, are classed under that head, and are not to be included in the general words of the statute.

2. The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation, except where scientific or technical terms are used.

3. The liability of an instrument to a stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and cannot be affected by proof of facts outside of the instrument itself.

4. If there is a doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because, in the language of Pollock, C. B., in *Gurr v. Scudds*, "a tax cannot be imposed without clear and express words for that purpose." (1873) *U. S. v. Isham*, 17 Wall. 496, 503.

Absence of proper stamp from tobacco package is *prima facie* evidence of non-payment of tax, and forfeiture follows: § 3373, R. S. (1882) *U. S. v. Keyes*, 10 Fed. Rep. 876 (even refuse or worthless scraps and sweepings. So absence from cigars, R. S. § 3398; from fermented liquors, R. S. § 3352; from spirits, R. S. § 3289; (1893) *U. S. v. Sykes*, 58 Fed. Rep. 1000, 1004.

The face and form of a paper, rather than the nature of the transaction, will determine taxability under stamp laws. (1899) *Granby Mercantile Co. v. Webster*, 98 Fed. Rep. 604; (1902) *Mchts' Warehouse Co. v. McClain*, 112 Fed. Rep. 787.

The unexpected prolongation of the debates on the measure required the operation of this section to be put forward from November 1st, as planned, to December 1st. Any shorter grace would have reproduced the Civil War troubles, when enabling Acts had to be passed because stamps were not obtainable.

PENALTY FOR OMISSION TO STAMP.

Sec. 6. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$100, at the discretion of the court.

Penalty for Omission of Stamp.

These sections require the stamp to be affixed, but at no place (unless by indirect implication as in the proviso of § 12) is any particular person required to affix it. It was held immaterial. (1868) *Adams v. Dale*, 29 Ind. 273. Cf. (1867) *Myers v. Smith*, 48 Barb. 614; (1865) *Teagarden v. Garver*, 24 Ind. 399. As to cancellation, see § 8.

Section 6, though clearly taken over from the Act of June 13, 1898 (and in turn from July 1, 1862, R. S. § 3422), was radically changed by the striking of the former provision making such unstamped instruments incompetent as evidence. Earlier Acts imposed forfeitures and penalties in addition to inadmissibility. The Act of 1898 substituted the misdemeanor penalty with inadmissibility (both in the corresponding § 7 and in two others §§ 13 and 14 which also, as §§ 11 and 12, *post*, have been changed in this respect).

See notes under §§ 11, 12, *post*, for the reported litigation on the effect on the instrument, the extent and nature of which doubtless induced the present amendment of § 6 and also of the old § 13 (now § 11), § 14 (now § 12). Congress may have been influenced also by the undesirability of possibly totally invalidating a large number of instruments by so stringent a provision in an Act intended to be in operation only about one year. The pos-

sible inconvenience would outweigh the small saving of taxes which alone would be the motive for such severity.

The Act now has the misdemeanor penalty, in this connection, as follows:

Section 6, covering all papers; no question of intent; fine up to \$100 for omission.

Section 8, covering all papers; fine up to \$500, or prison to six months, or both, for fraudulent use of uncanceled stamp.

Section 9, covering promissory notes; fine up to \$200 for omission with intent to evade.

Section 11, covering all papers; fine up to \$50, or prison to six months, or both, for registering, issuing, selling or transferring without due stamping and cancellation, with intent to evade.

The little words "with intent, etc.," are clearly important, and for better reasons than a senator gave for moving an amendment to include them. "I see those words are to be found in some of the old acts in regard to stamps in 1864, 1865, 1866, and along there." Cong. Rec. May 17, 1898, p. 5587.

FORGING AND COUNTERFEITING STAMPS.

Sec. 7. That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, which shall have been provided, or may hereafter be provided, made, or used in pursuance of this Act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp, die, plate or other instrument, as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper with any such forged or counterfeited stamp, die, plate, or other instrument, or part of any stamp,

die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed, or any part thereof; or if any person shall utter, or sell, or expose for sale, any vellum, parchment, paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument, which shall have been so provided, made, or used as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of this Act from any vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be used, joined, fixed, or placed, to, with, or upon any vellum, parchment, paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed

from any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the canceling or defacing marks of any adhesive stamp with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offenses as aforesaid shall be seemed guilty of a misdemeanor, and, upon conviction thereof, shall forfeit the said counterfeit stamps and the articles upon which they are placed, and shall be punished by fine not exceeding \$1,000, or by imprisonment and confinement at hard labor not exceeding five years, or both, at the discretion of the court.

Forging and Counterfeiting Stamps.

Compare Act of 1898, June 13, § 8; 1869, April 10, § 2; 1866, July 13, § 9; 1864, June 30, § 155; 1862, July 1, § 98, and R. S.

§ 3429, as amended by 20 Stat. 327, Act of March 1, 1879. And see Crim. Code, §§ 147, 148, including stamps.

See notes under § 23, *post.* (1902) Kaufman v. U. S., 113 Fed. Rep. 919 (selling washed stamps); (1902) U. S. v. Brown, 119 Fed. Rep. 482 (same and impersonation of revenue officer).

CANCELLATION.

Sec. 8. That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$500, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That instead of cancellation by initials and date, the stamps on the articles enumerated in Schedule B shall be so affixed on the box, bottle, or package that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof the party making default shall be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this Act.

Cancellation.

See Act of 1898, June 13, § 9; 1864, June 3, § 156; 1862, July 1, § 99. The methods of cancelling the various other internal revenue stamps are provided in the respective appropriate R. S. sections.

While it is a matter of indifference who attaches a stamp, yet if the law is to be effective the person attaching it or issuing the paper must be held to do the cancelling. In numerous instances it is more convenient and doubtless safe for the latter person to authorize the first recipient of the paper to cancel the stamp. For instance, it has been customary for telegraph and other companies and certain institutions to assume that the handing in of stamped papers gave authority to cancel the stamps. The penalty is for fraud. (1867) *Myers v. Smith*, 48 Barb. 614; (1868) *Cedar Rapids R. R. Co. v. Stewart*, 25 Iowa, 115.

Cancellation should be such as to prevent re-use and a defacement was held enough. (1870) *Taylor v. Duncan*, 33 Tex. 440. The sufficiency of the cancellation is a question of fact. (1870) *Rees v. Jackson*, 64 Pa. 486; (1869) *U. S. v. Brown, Deady*, 566. Cf. (1873) *Foster v. Holley's Admin.*, 49 Ala. 593, where the court declined to believe that Congress intended to take away the right of contract from a person who happened to be uneducated or otherwise incapable of following the Act precisely.

Failure to cancel would not invalidate a stamped note. (1867) *Ballard v. Burnside*, 49 Barb. 102; (1870) *Union, etc., Ass'n v. Neill*, 31 Iowa 95; (1881) *Dowell v. Applegate*, 7 Fed. Rep. 881; (1865) *Desmond v. Norris*, 10 Allen, 250.

Even under the stricter earlier laws, a failure to cancel did not exclude from evidence. (1872) *Browne v. Bennett*, 24 La. Ann. 618; (1872) *Doffin v. Guyer*, 39 Ind. 215; (1870) *Patterson v. Gile*, 1 Col. T. 200; (1868) *Adams v. Dale*, 29 Ind. 273.

Under § 22, *post*, the commissioner has power to prescribe methods of cancellation, either substituted or additional. Under this power in former Acts, stamps were imprinted, as on checks, so that the ordinary writing would cancel. This is analogous to the placing of adhesive stamps on packages so that the opening of the package destroys the stamp. The department will send its latest circular on this subject to anyone who requests it.

OMITTING STAMP FROM PROMISSORY NOTE.

Sec. 9. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, with design to evade the payment of any stamp tax, any promissory note liable to any of the taxes imposed by this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax hereby charged thereon, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$200, at the discretion of the court.

Omitting Stamp from Promissory Note.

Compare Act of 1898, June 13, ch. 448, § 10; R. S. 1878, § 3422; 1866, July 13, ch. 184; 1864, June 30, ch. 173, § 158; 1862, July 1, § 100.

The older laws imposed a forfeiture penalty and made the instrument invalid. They included all negotiable instruments. Later, the invalidation was dropped and the omission with design became a misdemeanor. Cf. § 6 and notes.

Section 9 now applies only to notes, and many of the old cases on stamping notes are inapplicable because of the statutory changes above mentioned.

The Act of 1898 even covered foreign bills of exchange by a special section (§ 11), inserted at this point, with penalty up to \$100. Repealed April 12, 1902.

An unintentional omission of a stamp from a note might be corrected by an authorized attorney holding it, there being no intent to evade. (1870) *Vaughan v. O'Brien*, 39 How. Pr. 515; (1867) *Blunt v. Bates*, 40 Ala. 470.

A subsequent holder in good faith for value is not affected by an original failure to stamp a note. (1871) *Sperry v. Horr*, 32 Iowa, 184.

An omitted stamp might be affixed in open court. (1865) *Garland v. Lane*, 46 N. H. 245; (1872) *Waterbury v. McMillan*, 46 Miss. 635.

So also in England, where decrees in chancery have been kept back to afford time. (1822) *Chervet v. Jones*, 6 Mad. 267; (1834) *Owen v. Thomas*, 3 Mylne & Keen, 353; (1834) *Beckwith v. Benner*, 6 Carrington & P. 681.

Even under strict statute, an unstamped note might be used collaterally, as to show by its very appearance that a drunken man must have written it, the defense being fraud. (1814) *Gregory v. Fraser*, 3 Camp. 454; (1838) *Coppock v. Bower*, 4 M. & W. 36. But see, under a later rule (1891) *Ashling v. Boon*, 1 Ch. 568.

Unstamped checks might be offered in evidence collaterally, where the object was not to make out a case or a defense. (1903) *Bryan v. First Nat. Bk.*, 205 Pa. St. 7.

A stamp omitted ignorantly might be affixed later when the necessity was discovered. (1866) *Tobey v. Chipman*, 13 Allen, 123; (1867) *Tripp v. Bishop*, 56 Pa. 424; (1868) *Green v. Lowry*, 38 Ga. 548.

As to the maker's inability to supply a stamp after the death of the payee, see (1868) *Weyman v. Torreyson*, 4 Nev. 124. But see (a case of a deed) (1870) *Mercer v. Mercer*, 29 Iowa, 557.

The stamp was no part of the note to which it was obliged to be affixed, and need not appear on an appeal record. (1871) *Cabbott v. Radford*, 17 Minn. 320; (1871) *Prather v. Tulauf*, 38 Ind. 155; (1867) *Hallock v. Jaudin*, 34 Cal. 167; (1866) *Trull v. Moulton*, 12 Allen, 396.

DISTRIBUTION OF STAMPS.

Sec. 10. That the collectors of the several districts are hereby authorized and required to furnish to any assistant treasurer of the United States or designated depositary thereof, or any postmaster located in their collection districts, respectively, a suitable quantity of adhesive stamps, without prepayment therefor, and may in advance require of any desig-

nated depositary, assistant treasurer of the United States, or postmaster a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps which may be placed in his hands and remain unaccounted for, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. And it shall be the duty of such collectors to supply their deputies with, or sell to other parties within their respective districts who may make application therefor, adhesive stamps, upon the same terms allowed by law or under the regulations of the Commissioner of Internal Revenue, who is hereby authorized to make such other regulations, not inconsistent herewith, for the security of the United States and the better accommodation of the public, in relation to the matters hereinbefore mentioned, as he may judge necessary and expedient. And the Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

Distribution of Stamps.

Cf. Act of June 13, 1898, ch. 448, § 12, repealed by April 12, 1902, § 7; Act of June 30, 1864, § 170; July 1, 1862, § 102.

These are administrative provisions which do not concern the tax payer except so far as the department has power to provide for sales of stamps without prepayment on bonded security under regulations to be adopted. See (1880) U. S. v. Goldback, 102 U. S. 623. As to stamp collector, see T. D. 93, April 10, 1900.

**PENALTY FOR ISSUING, ETC., WITHOUT
STAMP; POST-STAMPING.**

Sec. 11. That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$50, or by imprisonment not exceeding six months, or both, in the discretion of the court: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of \$10, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of \$50, on payment also of interest, at the rate of six per centum, on said tax from the

day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: *And provided further*, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the

original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: *And provided further*, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

Penalty for Issuing, Registering, Selling or Transferring Without Stamps; Provision for Post-stamping. (See notes under § 6, *ante*, and §§ 12 and 13, *post*.)

Cf. Act of July 13, 1866, ch. 184, § 9, and June 13, 1898, ch. 448, § 13, amended by March 2, 1901, ch. 806, § 7.

As this section was enacted in 1898, it was a piece of careless law making, but the serious defect was cured by the amendment of 1901. (1911) U. S. v. Chamberlin, 219 U. S. 250, 55 L. Ed. 204.

The section, as now re-enacted, has again been materially

altered, and, like the adjacent sections, has lost a principal sting. But again haste and heedlessness are evident. Default of proper stamps and cancellation no longer invalidates the instrument, but all the old provisions for validating defective papers are carried over into the new law. They will have their chief uses in correcting such stamp omissions as would prevent instruments from being registered or recorded under federal laws; and in avoiding the penalty which § 6 broadly imposes without regard to intent. The severer penalties of §§ 8, 9 and 11 are upon intentional or fraudulent omissions.

The first proviso in § 11, retaining the old language, says that due post-stamping shall restore validity for all purposes. And the second proviso even says the corrected instrument "may be used in all courts, etc." Such a procedure is no longer necessary in order to enable a paper to be used in evidence.

As the law now stands (Act of 1914), it has lost from:

Section 6 the exclusion from evidence.

Section 11 the invalidity and non-effect.

Section 12 the exclusion from evidence.

Section 13 the exclusion from evidence.

Whatever discussion there was on the law and decisions was in committee, but the chairman merely flatly stated on the floor that the federal government had no right to make rules of evidence. This is in fine contrast to the action of the House in 1898 (before which time the courts had repeatedly refused to recognize such a power in Congress), when an amendment tried to strengthen "invalid and of no effect" by adding "utterly void" (which were in some of the earlier Acts).

That an instrument was "void and of no effect," was held not to mean that a contract was "invalid." (1868) *McAfferty v. Hale*, 24 Iowa, 355.

The person to appear before the collector is the one who should have affixed the stamp. (1868) *Myers v. Smith*, 48 Barb. 614; but see (1869) *Schermerhorn v. Burgess*, 55 Barb. 422.

The collector shall affix the stamp or cause the paper to be stamped. See (1871) *Mobile R. Co. v. Edwards*, 46 Ala. 267; (1871) *Corrie v. Billin*, 23 La. Ann. 250. Under the Act of 1864, an omitted stamp might be affixed in open court. (1869) *Wigham v. Pickett*, 43 Ala. 140. Cf. (1872) *Moore v. Moore*, 47 N. Y. 467, and cases under § 9, *ante*.

In the case of an unstamped assignment of mortgage, the collector later remitted the penalty and stamped the instrument. Held, under the Act of 1898, that the unstamped instrument was not void, but at most excluded from evidence; and that the correction of the defect according to the Act restored all its qualities and relates back to the time of issue. (1900) Wingert v. Zeigler, 91 Md. 318.

Formerly, the record of a mortgage which was not properly stamped was inadmissible against third parties. Even a subsequent stamping by the collector could not divert intervening interests. (1867) McBride v. Doty, 23 Iowa, 122.

Where a certified copy of a mortgage was offered in evidence, it was presumed that the recorder required a proper stamping on the original. (1872) Grand v. Cox, 24 La. Ann. 462.

Invalidity under the Act of 1866 resulted only from fraudulent omission. (1869) Green v. Holway, 101 Mass. 243; (1870) Campbell v. Wilcox, 10 Wall. 421. Followed as to the Act of 1898 by (1903) Rowe v. Bowman, 183 Mass. 488.

The original obligation might be enforced, even where an unstamped writing was not admitted to proof. (1795) Wilson v. Kennedy, 1 Esp. 245; (1808) Brown v. Watts, 1 Taunt. 353; (1868) Wilson v. Carey, 40 Vt. 179; (1866) Jacquin v. Warren, 40 Ill. 459; (1868) Weyman v. Torreyson, 4 Nev. 124.

But the wrongful destruction of an unstamped paper by a person against whom it might be used would not open the way to parol proof. (1819) Rippiner v. Wright, 2 B. & Ald. 479.

"A stamp upon an oral agreement is an impossibility. The passing words cannot be caught and subjected to a material process. A stamp, indeed, might be purchased and cancelled whenever parties shall make an oral contract. If Congress shall so enact, the work can probably be performed. They have as yet enacted only that agreements in writing and instruments shall be thus dealt with." (1871) Fish v. Cottenet, 44 N. Y. 538, 543; (1869) New Haven & N. Co. v. Quintard, 6 Abb. Pr. N. S. 128, 140.

The law does not compel persons to reduce their agreements to writing. Collins on the Stamp Laws (Eng. 1841) and cases.

In the many cases under the older Acts, both invalidity and penalty were made to turn on *intent*. And, now that the invalidity feature is removed from all these sections, the question

of intent to evade the tax will principally have to be considered—even, doubtless, under § 6 (and compare § 17, *post*), where no reference is made to intent.

The purpose of all such tax laws is, of course, to get revenue; and the object of all the imposed penalties is to prevent the loss of revenue. It was never in contemplation that minor, essentially innocent defaults in so technical a matter should be, as such, heavily penalized. A mere default of stamp is not evidence of intent, though the Act has made it a misdemeanor. Elsewhere in the Act and in other laws, the absence of stamps is made *prima facie* proof of nonpayment and ground for forfeiture.

There are endless cases on the necessity of showing intent. Courts became impatient at being called upon to restate the well-established rule. (1869) *Frink v. Thompson*, 4 Lansing, 489; (1872) *Baker v. Baker*, 6 Lansing, 509; (1870) *Vaughan v. O'Brien*, 57 Barb. 491; (1867) *Holyoke M. Co. v. Franklin Co.*, 97 Mass. 150; (1870) *Morris v. McMorris*, 44 Miss. 441; (1869) *Whitehill v. Shickle*, 43 Mo. 537; (1866) *Govern v. Littlefield*, 13 Allen, 127; (1869) *Weltner v. Riggs*, 3 W. Va. 445; (1867) *Hallock v. Jaudin*, 34 Cal. 167; (1872) *Works v. Hershey*, 35 Iowa, 340; (1873) *Emery v. Hobson*, 63 Me. 33; (1874) *Oxford Iron Co. v. Spradley*, 51 Ala. 171; (1867) *Hitchcock v. Sawyer*, 39 Vt. 412; (1872) *State v. Hile*, 30 Wis. 416; (1867) *Harper v. Clark*, 17 Ohio St. 190; (1869) *New Haven & N. Co. v. Quintard*, 6 Abb. Pr. N. S. 128, 137, and full discussion in concurring opinion at p. 139. The burden of proof to show intent is on the party objecting.

“Intent is the essence of the crime.” (1873) *U. S. v. Buzzo*, 18 Wall. 125.

Stamp omission would not invalidate an instrument unless made with intent to defraud the government. (1867) *Vorebeck v. Roe*, 50 Barb. 302; (1869) *Howe v. Carpenter*, 53 Barb. 382; see (1867) *Coppernoll v. Ketcham*, 56 Barb. 111.

See note on the effect of stamp omission on criminal prosecutions in 46 L. R. A. 454.

An unstamped paper has generally been admitted in criminal cases. (1783) *Rex v. Hawkeswood*, 1 Leach Cro. Ca. 257.

A defect in stamping cannot be cured by any agreement between parties. (1834) *Owen v. Thomas*, 3 Mylne & Keene, 353. The English courts have frowned upon such attempts as com-

binations to defraud the revenue. (1848) *Bennison v. Jewison*, 12 Jur. 485; (1815) *Abraham v. Dubois*, 4 Campbell, 269.

The British Acts, while invalidating some instruments, have been liberal regarding papers and records likely to be needed in evidence in court. Griffith's Stamp Digest, appendix III, p. 260; Tilsley on Stamp Laws, pp. 5, 8, 54, 154, 188, 289, citing cases; Edwards on Stamp Act, p. 12; (1834) *Rex v. Preston*, 3 N. & M. 31, 5 B. & Ad. 1028.

There has been a gradual tendency to relax the severity of laws making unstamped instruments invalid. The Act of July 1, 1862, was mitigated by that of July 14, 1862, and again by Dec. 25, 1862, and by March 3, 1863. In part, doubtless, these enabling Acts were inspired by the actual scarcity of stamps at certain times and places. Under statutory authority the department in 1898 used over-printed "I R" postage stamps. In the present instance it appears that the administration, confident that the Act would pass, started work on the printing of new stamps while the matter was before Congress.

As to the limit of time for post-stamping. (1871) *Pugh v. McCormick*, 14 Wall. 361.

This section in the form in which it stood in the Act of 1898, § 13, in effect superseded R. S. 3422, which was left in the statutes after the repeal of earlier stamp Acts by June 6, 1872, and March 3, 1883. Similarly, the 1898 provisions have been deemed continuing law for the post-stamping of papers under the Act of 1898.

The twelve months limitation of the second proviso applies only to the remission of penalty. Correction under penalty may be made later. T. D. 21368, July 10, 1899; 21539 of 1889.

Personal attendance is not required. Papers may be sent by mail, with an affidavit. T. D. 20696 of 1889.

There is no such provision for remitting penalties under Schedule B.

NOT TO BE RECORDED UNTIL STAMPED.

Sec. 12. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly

stamped, or with a deficient stamp, nor any copy thereof, shall be recorded until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: *Provided*, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required.

Not to Be Recorded until Stamped.

Compare Act of June 13, 1898, ch. 448, § 14; Act of July 13, 1866, ch. 184; Act of June 30, 1864, § 163. See notes, *ante*, under §§ 6, 9, 11 and *post*, § 13.

This is one of the sections which have been radically changed to meet the tendency of judicial decisions. The language stricken was "or admitted, or used as evidence in any court."

It is obvious that Congress might make laws of evidence for federal courts, and require or limit registration in federal offices. The former enactments as to excluding unstamped papers were therefore binding in federal practice. State courts, however, wherever the matter came up seriously, held that Congress might not superimpose rules of evidence or procedure upon State tribunals and administrative offices.

In many cases where the question did not present itself in this aspect, the State courts seemed to acquiesce. (1865) *Plesinger v. Dupuy*, 25 Ind. 419; (1872) *Chartiers Co. v. McNamara*, 72 Pa. 278; (1865) *Day v. Barker*, 36 Mo. 125; (1865) *Carpenter v. Johnson*, 1 Nev. 331; (1866) *Dorris v. Grace*, 24 Ark. 326; (1866) *Beebe v. Hutton*, 47 Barb. 187; (1866) *Patterson v. Eames*, 54 Me. 203; (1866) *Tobey v. Chipman*, 13 Allen, 123; (1867) *Knox v. Hindepoper*, 21 Wis. 527; (1867) *Corbin v. Tracy*, 34 Conn.

325; (1867) *Cooke v. England*, 27 Md. 14; (1870) *Logan v. Dils*, 4 W. Va. 397, and many other cases where documents originally unstamped were post-stamped and there was no fraudulent intent.

In (1869) *New Haven & N. Co. v. Quintard*, 6 Abb. Pr. N. S. 128, 143, concurring opinion says: " In the case of (1867) *Myers v. Smith*, 48 Barb. 614, the court did not notice the very significant words in the Act 'with intent to evade,' etc., but merely assumed that the contract was invalid because not stamped."

But when the question came up squarely and was well considered, the cases everywhere held that a federal tax law could not make rules of evidence for State courts, nor interfere with State administrative procedure. (1904) *Tomlin v. Woods*, 125 Iowa, 367; (1903) *Bryan v. First Nat. Bk.*, 205 Pa. 7; (1902) *Sulpho Bath Co. v. Allen*, 66 Neb. 295; (1902) *Pierpont v. Johnson*, 104 Ill. App. 27; (1900) *Small v. Slocumb*, 112 Ga. 279, 53 L. R. A. 130; (1900) *Cassidy v. St. Germain*, 22 R. I. 53; (1899) *Thomas v. Texas*, 40 Tex. Crim. App. 562, 46 L. R. A. 454; (1899) *Knox v. Rossi*, 25 Nev. 96, 48 L. R. A. 305 (note); (1898) *Peo. ex rel. Brew. Co. v. Fromme*, 35 App. Div. N. Y. 459; (1872) *Moore v. Moore*, 47 N. Y. 467; (1870) *Barbour v. Gates*, 43 N. Y. 40; (1870) *Moore v. Quirk*, 105 Mass. 49; (1869) *Green v. Holway*, 101 Mass. 243; (1867) *Latham v. Smith*, 45 Ill. 29; (1869) *Clemens v. Conrad*, 19 Mich. 170; (1870) *Spooner v. Eifler*, 1 Heisk. Tenn. 633; (1870) *Wallace v. Craven*, 34 Ind. 534; (1871) *Davis v. Richardson*, 45 Miss. 499; (1906) *Amos-Richia Co. v. N. W. Mut. L.*, 143 Mich. 684.

Under the Act of 1898, § 14, unstamped instruments could not be received in evidence. The amending Act of 1901, c. 806, § 7, continued the tax as to instruments taxable when issued. Neither the Act of 1901 nor the general repealing Act of 1902, c. 500, repealed § 14 of 1898, c. 448, § 14. (1904) *Sackett v. McCaffrey*, 131 Fed. Rep. 219, as to a notary's certificate on a home-
stead declaration, which was held inadmissible. It distinguishes (1870) *Buffington v. Day*, 11 Wall. 113, 20 L. Ed. 122 (tax on the salary of a State judicial officer), and argues that such a notarial function is not protected by the self-preservation autonomy accorded the States.

UNLAWFUL TO RECORD OR REGISTER UNLESS STAMPED.

Sec. 13. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law.

Unlawful to Record or Register Unless Stamped.

Compare Act of June 13, 1898, c. 448, § 15; Act of July 13, 1866, c. 184, p. 141; Act of June 30, 1864, c. 173, § 152. See notes under §§ 6, 11 and 12, *ante*.

The record, registry or transfer was formerly excluded from evidence. Obviously if the inhibition against recording and registration can be enforced by the other, remaining penalties, there would be no record or register to offer in evidence; and there may be situations where record or registry may be, of themselves, almost as important as their acceptance in evidence. The law was doubtless changed because Congress could not superimpose rules of evidence upon State courts. The prohibition against registering remains in this Act, but it is likely to be refused applicability to records and registers outside the exclusive federal jurisdiction. Congress has no better right to prescribe rules here than in the matter of evidence. It may be able, as in instances much complained of, to compel corporations to help enforce its tax laws; but it can hardly require administrative officers of a State or local government to pass upon the fact or sufficiency of a compliance with a stamp tax. Cf. the first proviso in § 15, *post*.

Section 9 uses the language, "make," etc., "or cause to be made," etc. So § 11, "register," etc., "or cause," etc. §§ 12 and 13 do not make a similar inclusion.

"A failure to comply with the War Revenue Law is a matter with which the register has nothing to do. The duty of the register is to record or file in his office those instruments or papers which, by the laws of the State, are entitled to be recorded or filed. * * * The responsibility of seeing that the proper

stamp is affixed rests upon the parties to the instrument, and the register is no more required to determine the validity, under the U. S. War Revenue Law, of an instrument offered for record than would be to determine whether a deed offered for record contravened some statute of the State or was offered for the purpose of defrauding creditors or for any other reason was invalid and void. To hold that such a duty rested upon the register would be to constitute him a judicial instead of a ministerial officer." (1898) *Peo. ex rel. Brewing Co. v. Fromme*, 35 App. Div. N. Y. 459.

The earlier Acts made the record, etc., "utterly void." This was changed in 1898 to inadmissibility, which is now dropped. The general prohibition against recording was formerly enforced in some States. (1867) *McBride v. Doty*, 23 Iowa, 122.

Under the severe early Act a mortgage insufficiently stamped was void. (1865) *Hoppock v. Plato*, 30 How. Pr. 120.

A chattel mortgage, being merely filed and not recorded, was held not taxable. (1867) *Vail v. Knapp*, 49 Barb. 299.

All mortgages were taxed by the Act of 1898, but in 1914 Congress has made a special effort to avoid the taxation of such instruments. It struck mortgages from Schedule A, *post*, and see proviso in the paragraph on conveyances in that schedule.

KIND OF DOCUMENTARY STAMP NOT ESSENTIAL.

Sec. 14. That no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax charged on any such instrument, paper, or document, provided a legal documentary stamp or stamps denoting a tax of equal amount shall have been duly affixed and used thereon.

Kind of Documentary Stamp Not Essential.

Cf. Act of June 13, 1898, c. 448, § 16; Act of June 30, 1864, c. 173, § 153.

In 1864 *proprietary* stamps were expressly *not* to be used. The same distinction is now made by requiring *documentary* stamps. These latter belong to Schedule A, and the former to Schedule B.

In view of the changes in the preceding sections, this whole section would seem, at least so far as documents are concerned, a mere *vestigium*. But in any event it is merely a precaution in recognition of the ordinary person's lack of expert knowledge of stamps. It is doubtful if, despite its broad language, a tobacco or oleomargarine stamp would suffice for a broker's note, although something analogous was ruled under an early Act when stamps were scarce.

**FEDERAL, STATE AND LOCAL SECURITIES
EXEMPT; ALSO CERTAIN ASSOCIATIONS,
ETC.**

Sec. 15. That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this Act: *Provided*, That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity: *Provided further*, That stock and bonds issued by cooperative building and loan associations, mutual ditch or irrigating companies, and building and loan associations or companies that make loans only to their

shareholders, shall be exempt from the tax herein provided.

Federal, State and Local Securities Exempt; Also Certain Co-operative Associations, etc.

Cf. Act of June 13, 1898, c. 448, § 17; July 13, 1866, c. 184; June 30, 1864, c. 173, § 154; R. S. 1878, § 3420. Act of Dec. 23, 1862.

This appears to apply primarily to securities, but Congress has no power to tax any of the governmental instrumentalities of a State. The proviso is much wider than the original text of the section. "Functions in their governmental, taxing or municipal capacity," would include all legitimate governmental instrumentalities. And the enumeration here of "taxing" along with "governmental" should prevent any narrowing of the section's meaning to limit it to securities.

A State tax deed exempt. (1867) *Sayles v. Davis*, 22 Wis. 225; (1869) *Delorme v. Ferk*, 24 Wis. 201. An order of county commissioners. (1866) *Nave v. King*, 27 Ind. 356.

A sheriff's official board exempt. (1869) *State v. Garton*, 32 Ind. 1. Also sheriff's certificate of appraisal of realty for a judicial sale. (1902) *Noble v. Citizens' Bk.*, 63 Neb. 847.

Government disbursing checks under an earlier Act were not taxable. Op. Atty.-Gen. XXII, 134.

The ordinary notarial acknowledgment, as on a declaration of homestead, is not a judicial act and is not excepted. This, however, was in a federal court. (1904) *Sackett v. McCaffrey*, 131 Fed. Rep. 219. See this case as cited, *ante*, under § 12.

But a notarial certificate on a deposition need not be stamped. (1866) *Prather v. Pritchard*, 26 Ind. 65 (under Act of 1864); (1900) *Stirneman v. Smith*, 100 Fed. Rep. 600 (under Act of 1898); (1902) *McNally v. Field*, 119 Fed. Rep. 445, the bond of an administrator, which is an indispensable part of the State's judicial system.

Nor a bond required to be given by an applicant for saloon license. (1900) *U. S. v. Owens*, 100 Fed. Rep. 70; (1902) *Am-brosini v. U. S.*, 187 U. S. 1.

Nor a bond required of a notary. (1900) *Warwick v. Bettman*, 102 Fed. Rep. 127, 108 id. 46.

But the exemption does not apply where a State conducts an ordinary business, such as the liquor dispensary system. (1905) *South Carolina v. U. S.*, 199 U. S. 437.

The whole question of public ownership of utilities may yet come to be entangled with the power of Congress to tax.

STAMP PROVISIONS MADE APPLICABLE TO SCHEDULE B.

Sec. 16. That all the provisions of this Act relating to dies, stamps, adhesive stamps, and stamp taxes shall extend to and include (except where manifestly inapplicable) all the articles or objects enumerated in Schedule B, subject to stamp taxes, and apply to the provisions in relation thereto.

Stamp Provisions Made Applicable to Schedule B.

Cf. Act of June 13, 1898, § 19; June 30, 1864, § 164; July 1, 1862, § 106.

This refers to administrative matters and to counterfeiting, etc.; and especially in earlier Acts, to the provisions for imprinting stamps, as on check books, etc. It is one of the general inclusive provisions which are needed for, and necessary for shortening, elaborate Acts and are often retained when the law is simplified. It carries over the provisions of § 23, *post* (which see), making other laws applicable to all of the present Act.

PERFUMERY, COSMETICS, ETC.

Sec. 17. That on and after December first, nineteen hundred and fourteen, any person, firm, company, or corporation that shall make, prepare, and sell, or remove for consumption or sale, perfumery, cosmetics, preparations, compositions, articles, or things upon which a tax is imposed by this Act, as

provided for in Schedule B, without affixing thereto an adhesive stamp or label denoting the tax before mentioned shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, at the discretion of the court.

Perfumery, Cosmetics, etc.

Cf. Act of June 13, 1898, § 20; R. S. 1878, §§ 3430, 3436; Act of 1866 (14 Stat. 148); Act of June 30, 1864, § 165; July 1, 1862, § 107.

The original House bill had no Schedule B. The Senate amended it to include proprietary medicines and articles, much as in 1898. The present compromise was finally adopted. By eliminating drugs, etc., it removes many troublesome questions such as were disputed and even litigated under the Act of 1898.

The mere omission incurs the penalty. There is no question of intent. This is analogous to § 6, *ante*. See notes under § 18, *post*.

"Any similar articles" and "or any similar substance or article," are phrases which will revive some of the troubles of 1898. There is no mention of wrongful intent, and the most willing taxpayer may easily offend through the mere difficulty of identifying and distinguishing the things taxed. Both the trade and the department have had experience under the Act of 1898, and general rulings of the commissioner will doubtless promptly simplify the matter.

Under the Act of 1866, an indictment would lie for selling a box of sardines without proper stamping. (1869) U. S. v. Abbott, 9 Int. Rev. Rec. 186 (1 Circ., Mass.). See under Act of 1864. (1882) U. S. v. Moore, 11 Fed. Rep. 248. Action to recover penalty under Act of 1864 for selling unstamped matches. (1867) U. S. v. Walsh, 1 Abb. U. S. 66.

REMOVAL OF STAMPS; ILLEGAL USE OF STAMPS, ETC.

Sec. 18. That any manufacturer or maker of any of the articles for sale mentioned in Schedule B, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, or any other person who shall take off, remove, or detach, or cause, or permit, or suffer to be taken off, or removed or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offense shall be committed, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, at the discretion of the court, and every such article or commodity as aforesaid shall also be forfeited.

Removal of Stamps; Illegal Use of Stamps, etc.

Cf. Act of June 13, 1898, § 21; June 30, 1864, § 166; July 1, 1862, § 108; R. S. § 3431.

Here, as in Schedule A, a general imposition of penalty without question of intent is followed by others where intent is necessary. Cf. notes under § 11, *ante*.

In this and the next section, both having "intent to evade," a forfeiture of the articles is added to other penalties. Forfeiture is common in other revenue laws, both customs and excise. It affords the quickest way of making the law felt by the

person seeking to evade its operation. Earlier Acts relied, here as in Schedule A, more on penalties. The new method is to make the offence a misdemeanor. These misdemeanors are:

Section 17 regardless of intent.

Section 18 with intent to evade.

Section 19 to evade the tax.

Section 20 false or untrue declaration; and this section imposes a forfeiture for neglect, regardless of intent.

SALE OR REMOVAL OF UNSTAMPED ARTICLES; EXPORTATION.

Sec. 19. That any maker or manufacturer of any of the articles or commodities mentioned in Schedule B, as aforesaid, or any other person who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the tax thereon shall have been fully paid by affixing thereon the proper stamp, as in this Act provided, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the tax chargeable thereon, or any part thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, at the discretion of the court, together with the forfeiture of any such article or commodity: *Provided*, That articles upon which stamp taxes are required by this Act may, when intended for exportation, be manufactured and sold or removed without having stamps affixed thereto,

and without being charged with tax as aforesaid; and every manufacturer or maker of any article as aforesaid, intended for exportation, shall give such bonds and be subject to such rules and regulations to protect the revenue against fraud as may be from time to time prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Sale or Removal of Unstamped Articles; Exportation Exempt under Bond.

Cf. Act of June 13, 1898, § 22; June 30, 1864, §§ 167, 168; amend. March 3, 1865; Act of July 1, 1862, § 109; R. S. § 3433.

This section is similar to R. S. § 3296, as to unlawful removal or concealment of spirits. A person might be convicted under § 18 for detaching a stamp once affixed to an article; then under § 19 for removing or concealing the unstamped article; and then under § 17 for selling the article without paying the tax. The offenses are different and the Fifth Amendment might not save him. See (1890) U. S. v. 3 Stills, 47 Fed. Rep. 495; (1897) Pounds v. U. S., 171 U. S. 35; (1902) Pilcher v. U. S., 113 Fed. Rep. 248.

Early Acts, e. g., 1864, as some other portions of more recent internal revenue laws, provided expressly for bonded factories and warehouses for exportations. Such matters are now left to department regulations. See under Schedule B, *post*.

As to drawbacks on exportations (1873) U. S. v. 237 Boxes, 6 Ben. 543. And see under Schedule B, *post*. Cf. notes under §§ 17 and 18, *ante*.

MONTHLY DECLARATION OF COMPLIANCE.

Sec. 20. That every manufacturer or maker of any of the articles or commodities provided for in Schedule B, or his foreman, agent, or superintendent shall at the end of each and every month make, sign,

and file with the collector of internal revenue for the district in which he resides a declaration in writing that no such article or commodity has, during such preceding month or time when the last declaration was made, been removed, or carried, or sent, or caused or suffered or known to have been removed, carried, or sent from the premises of such manufacturer or maker other than such as have been duly taken account of and charged with the stamp tax, on pain of such manufacturer or maker forfeiting for every refusal or neglect to make such declaration \$100; and if any such manufacturer or maker, or his foreman, agent, or superintendent, shall make any false or untrue declaration, such manufacturer or maker, or foreman, agent, or superintendent making the same shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, at the discretion of the court.

Monthly Declaration of Compliance.

Cf. Act of June 13, 1898, § 23; July 1, 1862, § 110.

This applies to manufacturers, not to dealers. What is required is not a statement of business done, nor a report of manufacturers or of transactions, during the period. It is a device, such as is used elsewhere in revenue legislation (and in cross-examination!), to "corner" the offender. The penalty is imposed in terms for any "false or untrue declaration," without regard to whether the person knows it to be false. One object is, of course, to compel or constrain careful attention to a matter which might otherwise be neglected with no wrong intent but with great loss of revenue. See notes under § 17, *ante*, as to the maker's possible and probable honest difficulty of determining

precisely *what* he is legally required to declare. "No such article" raises many questions of definition which the Act itself does not answer. See Schedule B, *post*, for details.

It is not a prerequisite to the addition of the penalty that the return should be willfully false. (1878) German Sav. Bk. v. Archbold, 15 Blatch. 398.

**APPLIES TO DEALERS IN DOMESTIC AND
FOREIGN ARTICLES AS WELL AS MANU-
FACTURERS; IMPORTED ARTICLES PAY
DUTY AND STAMP TAX.**

Sec. 21. That the stamp taxes prescribed in this Act on the articles provided for in Schedule B shall attach to all such articles and things sold or removed for sale thirty days after the approval of this Act. Every person, except as otherwise provided in this Act, who offers or exposes for sale any article or thing provided for in said Schedule B, whether the article so offered or exposed is of foreign manufacture and imported or of domestic manufacture, shall be deemed the manufacturer thereof, and shall be subject to all the taxes, liabilities, and penalties imposed by law for the sale of articles without the use of the proper stamp denoting the tax paid thereon; and all such articles of foreign manufacture shall, in addition to the import duty imposed on the same, be subject to the stamp tax prescribed in this Act: *Provided further*, That internal revenue stamps required by existing law on imported merchandise shall be affixed thereto and canceled at the expense of the owner or importer before the withdrawal of such merchandise for consumption, and the Secre-

tary of the Treasury is authorized to make such rules and regulations as may be necessary for the affixing and canceling of such stamps, not inconsistent herewith.

Applies to Dealers in Domestic and Foreign Articles as Well as Manufacturers; Imported Articles Pay Duty and Stamp Tax.

Cf. Act of June 13, 1898, § 24; June 30, 1864, § 169; March 3, 1863, § 27; R. S. § 3435; (1867) *Cardinal v. Smith*, Deady, 197, under a feature of the 1866 Act now altered.

In this case the court commented on the fact that the commissioner had ruled both ways on a point. It suggested that "the commissioner, as a matter of public policy, might instruct his subordinates to refrain from enforcing this provision" according to an acknowledgedly doubtful construction, in order to avoid "unprofitable litigation." By the original ruling nine-tenths of the goods in question had probably paid the tax. The court said "a department ruling made under such circumstances and from such motives, well enough in itself, can have but little weight in a court."

STAMPS; PREPARATION, DISTRIBUTION, CANCELLATION; DISCOUNT ON STAMP SALES.

Sec. 22. That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act suitable stamps denoting the tax on the document, article, or thing to which the same may be affixed, and he is authorized to prescribe such method for the cancellation of said stamps, as substitute for or in addition to the method provided in this Act, as he may deem expedient. The Commissioner of Internal Revenue, with approval of the Secretary of

the Treasury, is authorized to procure any of the stamps provided for in this Act by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of November, nineteen hundred and fifteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue. That the adhesive stamps used in the payment of the tax levied in Schedules A and B of this Act shall be furnished for sale by the several collectors of internal revenue, who shall sell and deliver them at their face value to all persons applying for the same, except officers or employees of the Internal Revenue Service: *Provided*, That such collectors may sell and deliver such stamps in quantities of not less than \$100 of face value, with a discount of one per centum, except as otherwise provided in this Act.

Stamps; Preparation, Distribution, Cancellation; Discount on Stamp Sales.

Cf. Act of June 13, 1898, § 25; June 30, 1864, §§ 161, 170.

For general provisions as to stamps, see R. S. § 321, § 3238 (special tax stamps), § 3328 (wines), § 3341 (beer), § 3369 (tobacco), § 3395 (cigars), etc., and principally §§ 3445, 3446, as amended by 20 Stat. 327, giving the commissioner power to establish and alter any stamps.

"Such stamps," to be sold with a 1% discount, were ruled to apply to *adhesive* stamps, and not to imprinted documentary stamps nor to proprietary stamps from private dies. T. D. 19747, July 22, 1898.

Stamps are sold, not only at a discount, but, in certain cases, on credit. (1880) U. S. v. Goldback, 102 U. S. 623, R. S. § 3425.

SCHEDULE A.

STAMP TAXES.

Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and fourteen, by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each \$100 of face value or fraction thereof, 2 cents: *Provided*, That it is not intended by this Act to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: *Provided further*, That in case

of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each \$100 in value of said sale or agreement of sale or agree-

ment to sell, 1 cent, and for each additional \$100 or fractional part thereof in excess of \$100, 1 cent: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

That no bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agree-

ment to sell, in case of products or merchandise actually delivered at the time of sale or while in vessel, boat, or car, and actually in course of transportation, shall be subject to this tax, provided such bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell shall be accompanied by bills of lading or vouchers showing that the said products are actually in course of transportation as aforesaid.

Promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding \$100, 2 cents; and for each additional \$100 or fractional part thereof in excess of \$100, 2 cents.

Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation where a charge exceeding 5 cents is made a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and such shipper, consignor, agent, or person shall duly attach and cancel, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, a stamp of the value of 1 cent: *Provided*, That a consignment of newspapers to any one point or to different points by the same train or conveyance

when inclosed in one general bundle at the point of shipment shall be considered as one shipment, and, in lieu of a bill of lading therefor, the publisher of such newspaper shall file on or before the fifteenth day of each month with the collector of internal revenue for the district in which such newspaper is published a report under oath showing the number of such shipments during the preceding month to which report such publisher shall affix and cancel stamps equal in value to 1 cent for each shipment so reported: *Provided further*, That the report herein required shall not include shipments of newspapers delivered to points within the county in which the same are published. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of \$50 for each offense.

Telegraph and telephone messages: It shall be the duty of every person, firm, or corporation owning or operating any telegraph or telephone line or lines to make within thirty days after the expiration of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of dispatches, messages, or conversations originated at each of their respective exchanges, toll stations, or offices, and transmitted thence over their lines during the preceding month for which a charge of 15 cents or more was imposed, and for each of such messages or conversations the said person, firm or corporation shall collect from

the person paying for the message or conversation a tax of 1 cent in addition to the regular charges for the message or conversation, which tax the said person, firm, or corporation shall in turn pay to the said collector of internal revenue of their respective districts: *Provided*, That only one payment of said tax shall be required, notwithstanding the lines of one or more persons, firms, or corporations shall be used for the transmission of each of said messages or conversations: *Provided further*, That the messages or dispatches of the officers and employees of any telegraph or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: *And provided further*, That messages of officers and employees of the Government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages.

Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents.

Certificate of profits, or any certificate or memorandum showing an interest in the property or ac-

cumulations of any association, company, or corporation, and on all transfers thereof, on each \$100 of face value or fraction thereof, 2 cents.

Certificate: Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, 25 cents.

Certificate of any description required by law not otherwise specified in this Act, 10 cents.

Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, 10 cents.

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchase or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance thereon, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof in excess of \$500, 50 cents: *Provided*, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

Entry of any goods, wares, or merchandise at any customhouse, either for consumption or warehous-

ing, not exceeding \$100 in value, 25 cents; exceeding \$100 and not exceeding \$500 in value, 50 cents; exceeding \$500 in value, \$1.

Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, 50 cents.

Insurance: Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description (including rents or profits), whether against peril by sea or on inland waters, or by fire or lightning, or other peril, made by any person, association, or corporation, upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: *Provided*, That purely cooperative or mutual fire insurance companies or associations carried on by the members thereof solely for the protection of their own property and not for profit shall be exempted from the tax herein provided: *And provided further*, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, personal accident, and health insurance, and insurance described and taxed or exempted in the preceding paragraph and excepting also workmen's compensa-

tion insurance carried on by the members thereof solely for their own protection and not for profit), and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any liability, fidelity, guarantee, or surety company upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: *Provided*, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

Passage ticket, for each passenger, sold in the United States for passage by any vessel to a foreign port or place, if costing not exceeding \$30, \$1; costing more than \$30 and not exceeding \$60, \$3; costing more than \$60, \$5: *Provided*, That such passage tickets, costing \$10 or less, shall be exempt from taxation.

Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, 10 cents.

Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or

for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, 25 cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service.

Protest: Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protest, 25 cents.

Every seat sold in a palace or parlor car and every berth sold in a sleeping car, 1 cent, to be paid by the company selling the same.

Stamp Taxes.

Schedule A is, for the main part, re-enacted from the Act of 1898, ch. 448, June 13, amended as to subds. 2, 3, 5, 6, 10 and 13 by the Act of 1901, ch. 806, March 2, and repealed by Act of April 12, 1902. A similar schedule was contained in the Act of June 30, 1864, ch. 173, § 99.

Bonds, Debentures, Certificates of Stock, etc.

The proviso may be traced to the Act of 1866, 14 Stat. 134.

It is to be observed that this tax is on the transaction itself between buyer and seller, and not on the act of brokerage as such, although both the parties to the transaction and the broker (where there is one) are liable to the penalty. The broker's memorandum, as between him and his customer, is taxable under another paragraph, *post*, at a flat rate. The tax under this clause is according to face value. The only memorandum or bill required here is for transactions covering stock certificates in blank, but wherever, for any reason, there is a memorandum of sale or delivery or transfer, it must be stamped.

"Debenture" is nowhere satisfactorily defined. Even in England, where it is more common, it covers, generally, acknowledg-

ments of debt by a corporation or a large partnership. (1881) *British India, etc., Co. v. Com'rs of Inland Rev.*, 7 Q. B. Div. 165.

A narrower use of the word in England applies to a sort of floating security.

For the purposes of this Act, it may be defined "a writing acknowledging a debt," as in (1904) *People ex rel. Cohn v. Miller*, 180 N. Y. 16, under the State franchise tax law, discussing so-called "preferred debenture shares."

American railroads have issued debentures, especially where large companies pledge their holdings of the securities of smaller roads which they own. *Cook, Law of Corporations*, 7th Ed., § 776.

The N. Y. State tax on stock transfers, L. 1905, c. 241, constitutional. (1907) *Hatch v. Reardon*, 204 U. S. 152.

A broker was indicted for omitting the required stamps from a memo. of sale of R. R. shares. His demurrer, on the ground that the Act of 1898 was unconstitutional, was overruled. Found guilty on trial. Judgment went to the Supreme Court on writ of error and was affirmed. (1904) *Thomas v. U. S.*, 192 U. S. 363, affg. (1902) *U. S. v. Thomas*, 115 Fed. Rep. 207, where an elaborate opinion closes with the words, "The defendant's contention, seemingly, is that, in the procession of constitutional interpretation, some reason has just now appeared that should awaken the courts to a fundamental error, of which all men for a century have been profoundly unconscious. But such attention as is due the inquiry from the trial court confirms the wisdom of the past, and the power of Congress to lay the tax."

All stock issues pay 5c on \$100 face.

All bond, etc., issues pay 5c on \$100 face.

All sales, etc., i. e., all changes of possession or ownership, pay 2c on \$100 face. The stamp on sale, etc., goes

On the books, if there is no other evidence of transfer;

On the certificate, if transferee is named;

On a separate bill or memo., if transferred in blank.

Though a mining company has millions of shares at a dollar par value and selling for almost nothing, every certificate originally issued must be stamped. *Treas. Decis.* June 23, 1898 (19562).

It was first ruled under the Act of 1898 that "puts," "calls" and spreads were all taxable. *T. D.* 20093, Sept. 24, 1898. But on an opinion of the Att. Gen. (April 27, 1899), as to puts and

calls, the commissioner modified his ruling and taxed only calls and spreads. T. D. 21151, May 12, 1899. The matter was taken to the courts where it was held that a "call" was an agreement to sell, and must be stamped, but not so a "put." (1900) *White v. Treat*, 181 U. S. 264, reversing 100 Fed. Rep. 290. The court said that ambiguities should be resolved in favor of the taxpayer.

Where an agent on commission at a branch bucket-shop properly stamped a sale memorandum, and the operation was a single transaction, the principal did not violate the law (Act March 2, 1901, 31 Stat. 943), by omitting to stamp another memorandum. (1902) *U. S. v. Clawson*, 119 Fed. Rep. 994.

But this case is distinguished in (1904) *Municipal Tel. & Stock Co. v. Ward*, 133 Fed. Rep. 70, holding that the plaintiff could not recover taxes paid under protest on a series of transactions through "correspondents" who, however, were not really agents.

Where a broker transacted business through branch agencies, only one memorandum should be stamped. (1912) *Metropolitan Exchange v. Gill*, 199 Fed. Rep. 545.

But where one bucket shop co-operates with another in transactions, there must be two stamped memoranda. (1907) *Eldredge v. Ward*, 155 Fed. Rep. 253, 174 Fed. Rep. 402.

Where each separate agreement for future delivery was properly stamped, no tax is imposed on the settlements. (1900) *Fleshman v. McClain*, 105 Fed. Rep. 610; 106 Fed. Rep. 880. In this case it was also held that the government must collect a stamp tax by selling stamps, and cannot sue for the face value of omitted stamps. A broker who, under threat of suit, paid the collector a sum in lieu of stamps, was entitled to recover.

Sales of Products on Exchange.

Cf. Act of July 1, 1862, § 110, Schedule B; June 30, 1864, § 170, Schedule B; June 13, 1898, Schedule A, amended March 2, 1901.

The earlier Acts required a stamp on every agreement anywhere, but the Acts of 1898 and 1914 apply only to exchange or board transactions.

This tax was intended to apply to "paper transactions made on the exchange" and not to sales of "merchandise actually delivered contemporaneously with the sale."

As it originally stood in 1898 it was held constitutional. (1898) *Nicol v. Ames*, 89 Fed. Rep. 144 (as to Chicago stock yards), affirmed (1899) *Nicol v. Ames*, 173 U. S. 509, where the opinion

said: "A tax upon the privilege of selling property at the exchange and of thus using the facilities there offered in accomplishing the sale, differs radically from a tax upon every sale made in any place. The latter tax is really and practically upon property."

It was held to be a tax, not on sales for present delivery, but on the exchange privilege. To make this more clear, the Act of 1898 was amended by March 2, 1901, adding the second proviso. But when the Act of 1914 passed the House, this paragraph had been merely lifted from the earlier Act of 1898; and the Senate, in an interesting *seminar* on law and language, made it clear that the purpose was to tax "paper transactions which might involve future delivery, where it was not likely there would be actual delivery," "exchange transactions pure and simple," "a bucket shop tax." So an improved form of the 1901 proviso was added. (Cong. Rec. Oct. 16, 1914, p. 18385.)

The tax is determined by *value*. It is upon the transaction itself, as between parties, and, though on the exchange privilege, is not on the act of brokerage as such. The Act requires a bill or memo. as between buyer and seller, and both they and the broker are liable to the penalty. If there is a broker's note also, as between broker and customer, it pays a flat rate under a later paragraph of Schedule A.

Some so-called exchanges or boards are little more than bureaus of information. The actual transactions take place in private offices. "At" * * * a "similar place" will doubtless call for construction in attempted application to special instances. The object is, avowedly, to get at "gambling"—not at "purchase propositions" as such, but at "bucket shopping," including the "hedging or insurance proposition."

(Bank checks, drafts, certificates of deposit, orders for payment, bills of exchange, money orders and letters of credit, were taxed by the Act of 1898, Schedule A, but are omitted from the present Act.)

Promissory Notes.

This re-enacts only part of one of the paragraphs of Schedule A of the Act of 1898, ch. 448, June 13. A similar tax is found in the Act of 1864, ch. 174, June 30, § 170, Schedule B, and Act of 1862, ch. 119, July 1, § 110, Schedule B.

A paper signed by several, each promising to pay a sum indicated, is taxable on the total amount as a note. (1867) *Ballard v. Burnside*, 49 Barb. 102.

A receipt for money loaned, importing an obligation to repay, must be stamped. (1870) *Hoops v. Atkins*, 41 Ga. 109.

The use of a receipt where a note should be used was ruled to show intent to evade the tax. T. D. 20985, April 8, 1899.

A due-bill taxable. (1866) *Jacquin v. Warren*, 90 Ill. 459.

An unsigned admission of balance due on accounting is not a taxable note. (1869) *Jones v. Jones*, 38 Cal. 584; (1813) *Wellard v. Moss*, 1 Bing. 134.

A promissory note under seal, i. e., a judgment note, or bill obligatory, is a note, not a bond. T. D. 21815, Dec. 4, 1899.

In 1898 the commissioner directed the collector at New York to advise the clearing house that members must discontinue a method of lending money against bank checks, with collateral; that such checks were acknowledgments of debt used in place of notes, and taxable as such. T. D. 20463, Dec. 27, 1898.

An indorsement of a note need not be stamped. (1840) *Richards v. Frankum*, 9 Carrington & P. 221; (1871) *Pugh v. McCormick*, 14 Wall. 361, 374.

A simple I. O. U., without terms as to payment, not taxable. (1795) *Fisher v. Leslie*, 1 Esp. 426; (1909) *Chitty on Contracts*, 15 Ed. p. 137.

An unstamped instrument may be the subject of forgery. (1871) *State v. Mott*, 16 Minn. 472; (1868) *Cross v. Peo.*, 47 Ill. 152; (1872) *State v. Hill*, 30 Wis. 416; (1883) *Laird v. State*, 61 Md. 309; (1899) *Thomas v. State*, 40 Tex. Crim. App. 46, L. R. A. 454, note; (1873) *Miller v. Peo.*, 52 N. Y. 304.

Express and Freight; Domestic Bill of Lading.

This is taken with slight change from the Act of 1898, c. 448, 30 Stat. 448, Schedule A. Express companies were taxed by the Act of 1862 and were expressly exempted by the Act of 1865, c. 78.

Under the Act of 1898, it was not specifically provided who should pay for or attach the stamp; and it was held that the carrier was not precluded from requiring the shipper to pay the tax. (1900) *American Express v. Michigan*, 177 U. S. 404, re-

versing, 77 N. W. 317. (1898) Crawford v. Hubbell, 89 Fed. Rep. 961; (1900) 177 U. S. 419.

The present Act specifically requires the shipper to attach and cancel the stamp.

The penalty upon the carrier remains the same, and is for not issuing the bill of lading in every case where the transportation charge exceeds five cents.

The Georgia State Railroad Commission ordered an express company to supply the required stamps. The company procured an injunction which the Circuit Court of Appeals vacated, ordering a dismissal. The Supreme Court affirmed, on the ground that a new Act of Congress had, pending the litigation, repealed the tax. (1899) Dinsmore v. Southern Express Co., 92 Fed. Rep. 714; (1900) 102 Fed. Rep. 794; (1901) 183 U. S. 115.

A check for special delivery baggage from an address in one city to an address in another, such as used by transfer companies, is not taxable. T. D. 13, Jany. 9, 1900.

A check for a bicycle going as baggage is not taxable. T. D. 62, March 8, 1900.

A traveler's baggage, even excess weight, is not express nor freight, and a receipt or check for it does not require a stamp. Op. Atty.-Gen. XXII, 246.

This paragraph does not expressly exempt shipments for the government. Cf. Telegraph and telephone service, *post*. Under the Act of 1898 it was ruled that express receipt for shipment under government contract must be stamped. Op. Atty.-Gen. XXII, 320.

But not where shipment is for a railroad company over its own lines. Op. Atty.-Gen. XXII, 252.

Shipments by rail to Canada and Mexico are included. 24 Atty.-Gen. Op. 44.

Under the Act of 1898, "duplicate" bill of lading, etc., did not include a mere copy used as a receipt or for filing and not really an original. (1904) Wright v. Michigan Cent. R. C., 130 Fed. Rep. 843. Cf. (1904) Simpson v. Treat, 126 Fed. Rep. 1003 (copy of charter party).

The change in the paragraph as to newspapers was primarily a concession to the growing use of interurban trolleys by the increasing number of afternoon dailies, but the new plan expedites all deliveries by shipment.

"Carrier" and "person whose occupation is to act as such," are wide terms. Here as elsewhere the distinction will often turn on "occupation." A rural doctor, toting a bundle, is not a carrier. See (1906) *City of Topeka v. Jones*, 74 Kan. 164; (1905) *South. Exp. Co. v. Rose Co.*, 124 Ga. 581, 5 L. R. A. 619.

The present Act has eliminated the former exclusion of unstamped bills of lading from evidence. This change accords with that under §§ 6, 12 and 13, *ante*.

(A stamp tax imposed on foreign bills of lading by the Act of 1898 was held unconstitutional as taxing exports. [1901] *Fairbank v. U. S.*, 181 U. S. 283; [1903] *N. Y. & Cuba Mail v. U. S.*, 125 Fed. Rep. 320, reversed on another point, 200 U. S. 488.

The Act of June 27, 1902, c. 1160, provided for the refund of taxes illegally collected on export bills of lading [as also on certain legacies]; and c. 408 of 1912 fixed a limit of time for filing claims. Regulations as to procedure are in Treas. Circulars No. 627, July 3, 1902; No. 628, July 8, 1902.)

Telegraph and Telephone.

Under the Act of 1898, c. 448, 30 Stat. 448, telephone and telegraph messages were taxed under separate paragraphs. Telegrams had been taxed by the Act of 1862, c. 119, July 1, § 110, Sch. B. The telephone tax was new in 1898.

As to telegrams the Act of 1898, § 18, forbade the transmission of an unstamped message, but did not expressly require the company to pay the tax. It was generally assumed, and later held, that the sender must stamp the message, as the "maker or signer" under the general provision (§§ 5, 6). The companies assumed to cancel uncanceled stamps and to be thereto authorized by the sender.

It is the duty of the sender (maker or singer) to stamp the message (buy, affix and cancel), and the company is separately forbidden to forward it unstamped. The penalty of \$100 upon the sender is to secure payment. The penalty of \$10 upon the company is to insure attention and service in the enforcement of the law. (1899) *Kirk v. Western Union T. Co.*, 90 Fed. Rep. 809. Followed by (1900) *Gray v. West. U. T.*, 85 Mo. App. 123.

This is now changed. The penalty on the company is under the general provision of section 23, *post*. "The person paying" covers the recipient of a "collect" message.

In 1898 the telephone company was required to pay the tax, and the present specific reference to the origin of messages and the person who pays were absent.

Where a subscriber's contract was \$90 for 600 local calls, this was equivalent to a message rate of 15 cents, and the company was taxable. (1904) *N. Y. Telephone v. Treat*, 130 Fed. Rep. 340.

The chief difficulties, and they will be substantial, in applying this provision, will be in determining whether the message rate is 15 cents (under existing contracts with regular subscribers), and in devising by the company of a satisfactory method of collecting the tax. The company must pay, and it must collect as best it can. This will be easy at pay stations having an operator, but the prepayment slot devices offer a problem. The company will perhaps pay this latter tax rather than stop the prepayment service. High rate calls are rare at such stations. Some of the other difficulties are chiefly matters of records and accounting. It would appear that Congress intended the companies to bear the burden.

The company can hardly sue for the pennies, and it may not be permitted by State boards to "cut off the gas." The government will hardly use its legal machinery to aid the companies.

The chairman of the Senate Finance Committee said, "These taxes are not paid by the telephone companies. They are paid by the senders. Most of the telephone messages will escape taxation altogether"—as costing less than 15 cents. *Cong. Rec.* p. 18379.

"The person paying" covers "reversed charges," as well as the use of a subscriber's telephone by another person.

Indemnity Bonds and Other Bonds.

This is a restoration of the language of the Act of 1898. In the amendatory Act of March 2, 1901, to "reduce taxation," the latter part, "all other bonds," etc., was carelessly dropped in a way to carry the exception. In that form it was held to apply to a surety indemnity but not to an administrator's bond. (1902) *McNally v. Field*, 119 Fed. Rep. 445.

Similar taxes were imposed by the Act of 1862, July 1, § 110, Sch. B., and 1864, June 30, § 170, Sch. B.

When the Act of 1898 went into effect it was at first ruled that the "legal proceedings" referred to in the exception were only such as attachment, injunction, appeal, etc.; but, on an opinion from the Attorney-General, bonds of executors, administrators and guardians (all persons under judicial control) were ruled not taxable. Report of Commissioner, 1898, p. 113, and T. D. 20756, March 1, 1899.

Where an employer is indemnified but the employee signs no bond, the surety document is really a fidelity policy, and there is no tax under this clause. When both the employee and the surety sign, the employee (principal) pays the bond tax, and the surety adds the percentage insurance tax. T. D. 15, Jan. 11, 1900, being a letter to the American Surety Co.

Congress has no power to tax the instrumentalities of a State, e. g., the bond of an administrator, which is an indispensable part of the State's judicial system. (1902) *McNally v. Field*, 119 Fed. Rep. 445.

Sheriff's bond not taxable. (1869) *State v. Garton*, 32 Ind. 1.

Where a bond is required by a State law from an applicant for a saloon license, it is one of the exempted instrumentalities of government. (1902) *Ambrosini v. U. S.*, 187 U. S. 1; (1900) *U. S. v. Owens*, 100 Fed. Rep. 70.

So, also, of a bond required of a notary public. (1900) *Warwick v. Bettman*, 102 Fed. Rep. 127; 108 Id. 46. In this matter the Attorney-General of Texas tried to argue constitutionality with the Department, but received a flat ruling that all such bonds of State and local officers would continue to be taxed. T. D., 20510, Jan. 10, 1899. A few days later this ruling was cited to the Governor of Ohio. T. D. 20547, Jan. 13, 1899. An Ohio notary tested the matter in this case. The States still have "rights."

Certificate of Profit or Interest.

Cf. Act of 1898, c. 448, June 13, Sch. A; Act of 1864, c. 173, June 30, § 170, Sch. B; Act of 1862, c. 119, July 1, § 110, Sch. B.

This appears to be a catch-net provision, of rare application, to cover such accumulated profits as have sometimes been divided by new stock issues.

Marine Certificates.

Cf. Act of 1898, c. 448, June 13, Sch. A; Act of 1864, c. 173, June 30, Sch. B; Act of 1862, c. 119, July 1, Sch. B.

On the original certificate of damage, but not on copies. T. D. 19706, July 18, 1898. And see T. D. 20387, Nov. 26, 1898, as to certificates of local inspection of steamers. Official copies and copies required by law to be furnished to owners are exempt. Likewise the collector's endorsement on registers, enrollments, etc., of change of masters is exempt as a government instrumentality.

Other Certificates Required by Law.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

Earlier Acts expressly taxed writs and other papers used in legal proceedings. The question of unwarranted interference with State processes came only gradually to be discussed. The elimination of nearly all such taxes in 1867 left a few traces of the earlier language in the statutes. Many decisions and rulings are of little value now, as both courts and Congress have increasingly recognized the exemption of State and local governmental instrumentalities.

A notarial certificate on a deposition does not require a stamp. T. D. 122, May 11, 1900. So held under the Act of 1864, June 30, c. 173, 13 Stat. 223, 299; (1866) *Prather v. Pritchard*, 26 Ind. 65; (1864) *Cardell v. Bridge*, 9 Allen, 355. And under the Act of 1898. (1900) *Stirneinan v. Smith*, 100 Fed. Rep. 600.

But not so where the notarial act is in no sense judicial. Nor does a stamp tax on an ordinary notarial certificate unduly burden an instrument of State government; as the notary himself is not taxed. (This was a Federal case.) (1904) *Sackett v. McCaffrey*, 131 Fed. Rep. 219 (acknowledgment of a declaration of homestead).

(1902) *Noble v. Citizens' Bk.*, 63 Neb. 847, a sheriff's certificate of appraisal of realty for a judicial sale—not taxable.

Government instruments, papers, certificates, disbursing checks, etc., not taxable; but certificates made for private use must be stamped when issued and at the cost of the appellant. Op. Atty. Gen. XXII, 134.

Certificates issued by a State officer in the interest of the State are exempt. Certificates required by law, issued at the request, and solely for the use, of private persons, are taxable. A teacher's certificate is exempt. See § 15, proviso. T. D. 19883, Aug. 10, 1898.

(Charter Parties were taxed by the Act of 1898, c. 448, June 13, Sch. A, but are omitted from the present law. It was held that where a charter party was executed and left abroad, a copy brought here for necessary use was taxable. [1904] *Simpson v. Treat*, 126 Fed. Rep. 1003.)

Broker's Note.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

Mala grammatica non vitiat chartam.

The paragraph does not mean that "every memorandum of sale of any goods," etc., must be stamped. It is the broker's note, sometimes called memorandum of sale, which is taxed. The purpose is to tax the act of brokerage, not the transaction between parties. Cf. *ante*, as to sales on exchange.

A "contract note" under the British Act means the note sent by a broker or agent to his principal (except where such principal being a member of a Stock Exchange in the United Kingdom, is acting as a broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security. A broker loses his right to commissions by failing to send a note. Stamp Act, 1891, 54 and 55 Vict. c. 39, §§ 52, 53; Chitty on Contracts, 15th Ed. 1909, c. VI.

There is nothing in the present Act which requires a broker's note to be issued, but something of the sort is practically necessary in all ordinary stock, etc., transactions. See T. D. 191, July 31, 1900. Cf. (1900) *Fleshman v. McClain*, 105 Fed. Rep. 610; s. c. 106 id. 880; and 3 Treas. Dec. 24.

It would appear that, while the ordinary contract to sell realty is not covered by the last or the present Act, such an agreement, negotiated and "issued" by a broker and recognizing his brokerage rights, would be taxable under this clause. Cf. T. D. 116, May 1, 1900.

Quaere: Whether a broker does not in effect issue a broker's

note when he sends his client a report or even a bill for commissions?

Conveyance.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B.; July 1, 1862, § 110, Sch. B. Ad valorem duties on conveyances were first imposed in England by 48 Geo. III, c. 148 (1808).

The marked change in the present Act is that the tax is now upon the equity of redemption only. Formerly it was on "the consideration or value," without the qualification. This was interpreted to mean the value of the property, including any mortgage liens, as the English Act of 1891, § 57, expressly says. But the Circuit Court held that a master's conveyance of a railroad, subject to prior liens, required stamps only on the equity. (1899) *Central Trust Co. v. C. H. V. & T. Ry.*, 92 Fed. Rep. 919.

The actual consideration determines the taxation. Cf. (1873) *Hall v. Jordan*, 19 Wall. 271; (1881) *U. S. v. Griswold*, 7 Saw. 311.

And a collector might take testimony if he had reason to question the expressed consideration. Circular No. 17, July 13, 1864. The English law enforces, by severe penalties, the expression of the actual consideration (Act of 1891, 54 and 55 Vict. c. 39, § 5); and some States have similar requirements. This Act says "consideration or value," but does not expressly prohibit fictitious values or nominal considerations.

The Act of 1898 also included a tax on mortgages. When the Senate eliminated the mortgage tax and limited the deed tax to the interest conveyed exclusive of liens, it also added the precautionary proviso to this clause.

In requiring a master's foreclosure deed to be stamped for recording, held that the cost of the stamps might be treated as a disbursement against the receiver's funds. The opinion distinguishes the case of a check drawn on funds in court. (1898) *Farmers' L. & T. Co. v. Council Bluffs, etc., Co.*, 90 Fed. Rep. 806.

A partition deed not taxable. T. D. 50, Feby. 27, 1900.

A conveyance without consideration by an executor or by one trustee to another trustee is not taxable. T. D. 52, Feby. 28, 1900; 67, March 9, 1900.

Conveyances executed and delivered, but not recorded, at the

time the tax law goes into effect, are not subject to taxation when recorded subsequent to that date. T. D. 196, Aug. 9, 1900.

The Commissioner has warned Registers of Deeds not to relax the application of the law; not to "accommodate" persons who find it inconvenient to stamp instruments; and has suggested that a Register who returns papers with instruction at his own expense might properly add a charge to the recording fees. T. D. 94, April 12, 1900. But cf. notes under § 13, *ante*.

Some States have held that Congress has no more right to prescribe rules for the transfer of property than to prescribe rules of evidence.

An unstamped deed is valid to prove title in a partition action. (1871) *Moore v. Moore*, 47 N. Y. 467. And see notes under §§ 12 and 13, *ante*. But see (1867) *Barney v. Ivins*, 22 Iowa, 163.

Whether a deed is adequately stamped, depending merely on the value of the land, is not a federal question reviewable in the Supreme Court. (1865) *Lewis v. Campan*, 3 Wall. 106, 18 L. Ed. 211. But see (1873) *Hall v. Jordan*, *supra*.

A tax deed does not require a stamp. (1869) *Delorme v. Ferk*, 24 Wis. 201.

And see notes, *ante*, under § 15 as to the taxation of governmental instrumentalities.

A deed of release whereby a partnership receiver turns back property to the partners under a decree closing the administration is not a conveyance requiring stamps. (1900) *Mastin v. Mastin*, 99 Fed. Rep. 435.

Love and affection. (1870) *Mercer v. Mercer*, 29 Iowa, 557.

A mere declaration of trust in land is not a taxable conveyance. (1868) *Sime v. Howard*, 4 Nev. 473.

A conveyance through a middleman, one of the two transfers being for a nominal consideration, required only one stamp. (1864) *James v. Blauvelt*, Fed. Cas. 7180.

Even under the early Acts which used such words as "utterly void" as to the record of improperly stamped and unstamped instruments, the burden to show fraudulent intent was on the person seeking to set aside.

The old English attestation is "Signed, sealed, acknowledged and delivered, being first duly stamped, in the presence of —."

(Leases were taxed in 1898, but not under the present Act.)

Custom House Entry.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

Custom house manifests were taxed under the Act of 1898, but not under the Act of 1914.

Insurance.

Cf. Act of June 13, 1898; Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

The National Board of Fire Underwriters at a special meeting on Oct. 29, 1914, urged upon its members "the inevitable conclusion that the assumption of the stamp tax by companies would be unwarranted and dangerous." This is part of a general protest against over-taxation, but is primarily occasioned by the failure of the Act to recognize the large proportion of policies issued (requiring the stamps) and later "returned, not wanted."

Insurance brokers were taxed by the Act of March 3, 1865, etc., but they were not included in the special taxes of 1898 and 1914.

In the Act of 1898 there were three separate paragraphs (1) life, (2) marine, inland and fire, (3) casualty, fidelity and guarantee. In the present Act the first, life, is omitted and the other two are welded together, with a new statement of exemptions, including life, personal accident, health and certain purely co-operative insurance. Re-insurance is also exempted.

Recognizing that the premiums charged on open marine policies could only be ascertained from the underwriters' books, the underwriters were required to file bonds and make returns, and the stamps were affixed to the books and cancelled. T. D. 19645, June 30, 1898. And a similar plan was adopted for open policies of inland and fire insurance. Circular No. 504, July 20, 1898, T. D. 19740.

The Senate debate was enlivened by a spirited discussion of the old question of the "mutuality" of mutual companies as compared with old line companies. Cong. Rec. pp. 18320 et seq., Oct. 15, 1914.

An accident policy with quarterly premiums should be stamped as a contract for one year. The company's alleged intended plan of stamping each installment did not satisfy the law. (1900) *Buckalew v. U. S.*, 102 Fed. Rep. 320.

Note that "personal accident" policies are exempt from the new tax.

"Associations."

"The committee used that word because some correspondence which it had from one or two sources calling its attention to a number of aggregations, so to speak, of individuals operating sometimes as a sort of joint-stock concern, sometimes as a sort of partnership, and sometimes as an association. To designate each of them would be somewhat cumbersome, and after consulting the dictionary we felt that the word used alone would perhaps cover all these several different sources [sorts?] of aggregations, mutual in their character." Cong. Rec. Oct. 15, 1914, p. 18319.

"The mutual workmen's compensation companies thought they might be embraced in this provision unless they were expressly excepted from it; and, in response to their suggestion, we put in the exception." Cong. Rec., p. 18322.

Note on Legislation *as she is made*.

Mr. S. The Senator is now covering exactly the same ground again.

Mr. L. I suppose I have a perfect right to do so.

Mr. S. Oh, the Senator has an absolute right to do so.

Mr. L. Without having the Senator from ——— undertake the task of telling me what I may or may not do in this body.

Mr. S. Oh, the Senator can say anything he pleases. I do not care.

Mr. L. Now that we have cleared up that situation, with the kind permission of the Senator I will go ahead and try to say the one or two sentences that I started to say when I first rose.

Mr. S. Well, go ahead, and for God's sake, get through with it. (Laughter.) Etc., etc.

Cong. Rec., Oct. 15, 1914, p. 1834-5, while the insurance clause was under debate.

Passage Ticket.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

The paragraph in the Act of 1898 did not have the "sold in the U. S.," and the present change was thought to remove a

discrimination in the former Act in favor of Canadian agents. An unsuccessful attempt was made to classify tickets according to steamship classes, so as certainly to make the low rate apply to all steerage. The Act of 1898 (in a dislocated proviso in the warehouse paragraph) excepted traffic between the United States and British North America.

Quære as to whether the change in the law may not enable ship companies to sell such tickets in Europe and avoid the tax?

Members of the diplomatic corps are by comity exempted from stamp taxes such as those on checks, drafts, passage tickets and warehouse receipts. T. D. 170, June 29, 1900.

Porto Rico is not a foreign country, and passage tickets from United States to Porto Rico are not taxed. T. D. 115, May 1, 1900.

Cf. post as to all Insular Possessions.

Power of Attorney.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

The authorization in an ordinary judgment note is a "warrant" of attorney, not a power, and is not taxable. (1901) *Tolman v. Treat*, 106 Fed. Rep. 679; *affmd.* 113 Fed. Rep. 892.

Where a power was executed in England, to convey lands there and in the United States, the omission of a stamp tax did not affect the validity or admissibility in the United States. The penalty in England is not avoidance but inadmissibility until stamped, and the English revenue laws could not prescribe American practice. (1900) *Linton v. Natl. L. I. Co.*, 104 Fed. Rep. 584, 592.

Protest.

Cf. Act of June 13, 1898, Sch. A; June 30, 1864, § 170, Sch. B; July 1, 1862, § 110, Sch. B.

The practice has been to add the cost of the stamp to the ordinary protest fees. If the protest itself is warranted in law, its necessity or propriety will carry the added charge as a necessary incident. In any event there will be, as there ought to be, much protesting against too much protesting.

(Warehouse receipts were taxed in 1898, but are now omitted from the schedule.)

Parlor Car Seat; Sleeper Berth.

This tax was not included in Schedule A of the Act of June 13, 1898; but, after an unsuccessful attempt to tax the companies on gross receipts, a separate section (§ 28) imposed practically this same tax. In addition to paying the stamp, the company was to affix it. The company will now do both, or perhaps have tickets printed on imprinted stamp paper.

SCHEDULE B.

Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petrolatum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or any similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used, or applied as perfumes or as cosmetics, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed at the retail price or value the sum of 5 cents, one-eighth of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 5 cents, and shall not exceed the retail price or value of 10 cents, two-eighths of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 10 cents and shall not exceed the retail price or value of 15 cents, three-eighths of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 15 cents and shall not exceed the

retail price or value of 25 cents, five-eighths of 1 cent. And for each additional 25 cents of retail price or value or fractional part thereof in excess of 25 cents, five eighths of 1 cent.

Chewing gum or substitutes therefor: For and upon each box, carton, jar, or other package containing chewing gum of not more than \$1 of actual retail value, 4 cents; if exceeding \$1 of retail value, for each additional dollar or fractional part thereof, 4 cents; under such regulations as the Commissioner of Internal Revenue, with approval of the Secretary of the Treasury, may prescribe.

That all articles and preparations provided for in this schedule which are in the hands of manufacturers or of wholesale or retail dealers on and after December first, nineteen hundred and fourteen, shall be subject to the payment of the stamp taxes herein provided for, but it shall be deemed a compliance with this Act as to such articles on hand in the hands of wholesale or retail dealers as aforesaid who are not the manufacturers thereof to affix the proper adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure with its contents is sold at retail.

There shall be an allowance of drawback on articles mentioned in Schedule B of this Act on which any internal-revenue tax shall have been paid, equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from in-

ternal taxes not otherwise appropriated: *Provided*, That no allowance of drawback shall be made for any such articles exported prior to the date this Act becomes effective. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said commissioner, with the approval of the Secretary of the Treasury.

The original bill, as it went from the House to the Senate, re-enacted the Schedule B of the Act of 1898. Protests were more persuasive here than in some other matters, and the whole class of medicinal and proprietary articles was cut out, leaving only perfumes, cosmetics and chewing gum.

Cf. notes under §§ 17-22, inclusive.

For former schedules, see Act of June 13, 1898, Sch. B; June 30, 1864, § 170, Sch. C; July 1, 1862, § 110, Sch. C. And cf. R. S. 1878, §§ 3419, 3437.

The Greek word *kosmetikos* from which the English cosmetic is derived means *skilled in decorating*. The Collector, however, will not be liberal in exempting things not demonstrably decorative; for the Century definition expressly includes any preparation which "helps or *professes* to be able to help to beautify or improve the complexion." Webster includes "any external application *intended* to beautify and improve the complexion, skin or hair." There may thus be a shadow land where, while omitting medicines generally, the Act will appear to discriminate against *dermatotherapy*.

There will also be some interesting refinement of discriminating differentiation when the revenue detectives come to apply the definition of perfumery and perfume, as *exempli gratia* whether the substance emits a *pleasant* odor or a scent which really affects the organs of smell *agreeably*.

The Department issued a detailed Circular No. 16—Int. Rev. No. 501, revised, February 8, 1900 (T. D. 37), covering Schedule B of the Act of 1898.

Samples may be distributed under restrictions prescribed by the Commissioner.

Provision is made for permitting sales by slot machines, the sub-packages being taken from duly stamped larger packages. T. D. 247, Nov. 17, 1900.

Where automatic atomizers are used for perfumes they will have to be filled from tax-paid bottles. Where chewing gum is automatically delivered, the smaller packages must be taken from larger tax-paid packages.

A medicated soap containing 20 per cent. carbolic acid is not a toilet soap. (1895) *Park & Tilford v. U. S.*, 66 Fed. Rep. 731 (tariff).

Distilled water, though advertised to preserve health, lengthen life, soften, purify and preserve complexion, scalp and hair, is neither perfumery nor a cosmetic, nor a similar article. T. D. 21833, Dec. 7, 1899.

The Act of 1898 expressly exempted natural spring waters.

As to the right of a dealer to increase the cost to the customer where the tax is less than one cent. Cf. (1866) *Black v. 6th Ave. R. R.*, 1 Daly, 536.

Eau de Quine Tonique is a cosmetic. (1896) *In re Mdse.* Imported by Holt, 75 Fed. Rep. 998.

What is a phial or vial? (1896) *In re Grace*, 75 Fed. Rep. 2; (1897) *Grace v. Collector*, 79 Fed. Rep. 315.

If the article is not stamped when sold, it is presumed never to have been stamped. (1869) *U. S. v. Brown, Deady*, 566.

Speaking of hair oils and things, see the Laws and Orders of the General Court of Massachusetts, 1675:

"Whereas, There is manifest pride openly appearing amongst us . . . by some women wearing borders of hair, and their cutting, curling and immodest laying out their hair, which practice doth prevail and increase, especially among the younger sort, this court doth declare against this ill custom . . . and further do empower all grand juries to present to the county court such persons . . . and the county court are hereby authorized to proceed against such delinquents either by admonition, fine or correction."

Chewing Gum or Substitutes.

Of course, the boys of other days know that the tail of the title *supra* wags its head. No medicated masticatory from the *Sapota zapotilla*, be it naseberry, bully-tree or paraffin, can possibly merit exemption as does good old spruce gum; but it will be difficult to escape so large a word as "substitutes." The tax might be bearable if it were really four cents on the dollar of value; but "retail value" will be held to mean the same as "retail price or value" upon cosmetics.

"This article seems to have been a sort of football in the way of taxation. . . . People have been prone to ridicule it as a form of luxury not altogether to be commended. At the same time a very strong showing is made for the manufacturers"—having reference to the 66 per cent. duty on chicle in the Underwood tariff. Senator Burton, Cong. Rec. 18084.

When the wine tax was elaborated into § 2, *ante*, the old tax on bottled sparkling and other wines was omitted from Schedule B.

Drawbacks on exportations and duties on reimportations are covered by Act of Aug. 5, 1909, 36 Stat. 90. The Department issued regulations in a Circular, No. 39, Aug. 13, 1909, as to drawbacks on medicinal, etc., preparations. T. D. 29952. Amended Regulations, April 22, 1910, T. D. 30559, and July 27, 1910, T. D. 30831.

A claim for a statutory drawback (tobacco) may be sued, and the Commissioner may not make an unreasonable regulation to prevent recovery. (1906) U. S. v. Hyams, 146 Fed. Rep. 15; affirming 139 id. 997.

A drawback (customs), due and refused, may be sued in the Court of Claims. (1882) Campbell v. U. S., 107 U. S. 407.

Sec. 23. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, firm, company, corporation, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render,

under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe, and every such person, firm, company, corporation, or association who evades or attempts to evade any of the taxes imposed by this Act, or shall fail to truly account for and pay all taxes collected by them under this Act, or any regulations issued thereunder, shall be subject to a penalty of double the amount of taxes evaded or attempted to be evaded or unlawfully withheld, to be assessed and collected as other penalties incurred under internal-revenue laws are assessed and collected; and for the expense connected with the assessment and collection of the taxes provided by this Act there is hereby appropriated \$200,000, or so much thereof as may be required, out of any money in the Treasury not otherwise appropriated; \$170,000 to be added to and made a part of the appropriations for "salaries and expenses of collection of internal revenue, nineteen hundred and fifteen; and \$30,000 to the appropriation for paper for internal-revenue stamps, nineteen hundred and fifteen."

Other Laws Made Applicable. Collection of Taxes.

"Administrative . . . provisions" include all existing appropriate measures for collection and enforcement, including the Government's right to recover by suit. (R. S. §§ 3213, 3214.) (1910) U. S. v. Chamberlin, 219 U. S. 250, 269.

Deputies canvass every district in search of persons and objects subject to tax. R. S. § 3172, amend. by 28 Stat. 509. The

appropriate return must be made, and a default or a false return may involve a summons for testimony and exhibition of books. R. S. § 3173, amend. by 28 Stat. 509. For failure the collector may apply to the court for a contempt attachment. § 3175. Refusal or neglect of return involves a 50 per cent. penalty. False or fraudulent return involves a 100 per cent. penalty. § 3176, amend. by 28 Stat. 509. False return or neglect of summons involves as penalty a fine up to \$1,000 or prison to one year, or both. § 3179. Taxes may be collected by distraint. §§ 3187 *et seq.* Suits for taxes and penalties must be in the name of the United States. Judic. Code, § 919; R. S. 3213. As to taxes there is no limitation; as to penalties the limitation is five years, and as to crime, three or two years according to degree. Judic. Code, § 1047, and Act of July 5, 1884, 23 Stat. 122.

R. S. § 3173, as to power of collector to summon for examination does not apply to stamp taxation, but only where assessment is on returns. (1900) *In re Kinney*, 102 Fed. Rep. 468; (1875) *In re Becker*, Fed. Cas. No. 1208.

A collector may not enforce production of corporation books where the taxpayer is only a stockholder. (1870) *In re Chadwick*, 1 Lowell, 439.

Nor a man's private papers. (1885) *Boyd v. U. S.*, 116 U. S. 617 (a criminal case).

Under 18 Stat. 187, Act June 22, 1874, in a civil suit for revenue by the government, books and papers may be ordered produced on pain of confessing the allegations.

Under § 3462 of R. S., a search warrant may issue to search any premises where the applicant officer believes a revenue fraud is being committed.

And evidence so obtained is not inadmissible merely because the warrant was improperly issued. 24 Atty.-Gen. Op. 685; T. D. 1609, in the *Matter of Ripper*.

Under R. S. § 3463, rewards are paid to informers. Department Circular No. 99, 4th Revision; T. D. 21856, of 1899, and Regulations No. 12, revised. Extortion by informers penalized. R. S. § 5484; Crim. Code, § 145. Officers accepting bribes. R. S. § 3169. Officers must not aid violators in preparing statements. T. D. 1607.

13 Stat. 232, June 30, 1864, amended by 14 Stat. 107, July 13, 1866, gave the remedy of distraint. This was not superseded by the provision for equity suit in 15 Stat. 125, 167, July 20, 1868, which gave a cumulative remedy. (1908) *Blacklock v. U. S.*, 208 U. S. 75, distinguishing (1889) *Mansfield v. Excelsior Refining Co.*, 135 U. S. 326; both dealing with the question as to what passes when the government seizes land and sells it. See R. S. § 3187, § 3213.

Act of March 4, 1913, c. 166, amends R. S. § 3186, unpaid taxes a lien on property.

As to distinction between distraint and sale (and replevin by true owner), and seizure, condemnation and sale, see (1907) *Sheridan v. Allen*, 153 Fed. Rep. 568.

If the statute fails adequately to provide a method of collection, the omission may not be cured by regulation under the power given by the statute to the Commissioner, to the extent of making monthly assessments of an annual tax. (1901) *Spreckels v. McClain*, 109 Fed. Rep. 76.

An interesting instance of collecting "back taxes" (which are ordinarily the product of special agents' investigations) was the plan adopted after the Equitable Building fire in New York city. Tentative returns were accepted, with permission to amend. Report of Commissioner, 1913, p. 14.

A return for the assesment of a special tax must be verified by the person himself and not by an "agent." T. D. 49, Feb. 27, 1900.

The government may require the production of books and papers in civil suits as well as in criminal. Act of June 22, 1874, § 5, 18 Stat. 187.

As to perjury: § 125 Criminal Code; R. S. § 5392; (1908) *U. S. v. Lamson*, 165 Fed. Rep. 80; (1891) *U. S. v. Bedgood*, 49 Fed. Rep. 54; (1890) *U. S. v. Edwards*, 43 Fed. Rep. 67.

Oath before notary. (1888) *U. S. v. Hall*, 131 U. S. 50.

Before deputy collector. (1905) *U. S. v. Hardison*, 135 Fed. Rep. 419.

The steps requisite for the seizure and sale of lands are set forth in the Revised Statutes. The collector canvasses for persons liable, § 3172; return is made or compelled, §§ 3173-3181; the commissioner makes assessment and certifies to the collector, § 3182; the collector gives ten days' notice to pay, § 3184;

the tax becomes a lien after this, § 3186; and the collector may then distrain and sell, §§ 3187-3188; realty can be sold only after failure to find enough personalty, § 3196; the party is entitled to notice of sale, § 3197. (1878) *Brown v. Goodwin*, 75 N. Y. 409.

All prerequisites must be strictly complied with. (1882) *U. S. v. Allen*, 14 Fed. Rep. 263.

Other Laws Made Applicable. Penalties.

See the notes *ante passim*.

The general provision for the recovery of penalties is found in R. S. § 3213 *et seq.* The collector shall prosecute forfeitures, shall sue in the name of the United States for fines and penalties, and shall receive moneys so collected (including costs).

A penalty may be recovered by indictment or by a civil action for debt. (1890) *U. S. v. Craft*, 43 Fed. Rep. 374; (1871) *U. S. v. Foster*, 2 Biss. 453; (1866) *U. S. v. Morin*, 4 Biss. 93; (1893) *Lees v. U. S.*, 150 U. S. 476; (1880) *U. S. v. Chouteau*, 102 U. S. 603.

All persons participating in acts which are misdemeanors are liable as principals. (1893) *U. S. v. Sykes*, 58 Fed. Rep. 1000.

The double tax penalty is from R. S. § 3176, amended by 28 Stat. 509, and it is also specially enacted as to spirits. §§ 3256, 3296.

Constitutional. (1872) *Doll v. Evans*, 15 Int. Rev. Rec. 143, 144.

The penalty attaches to an untrue report, although it be not wilfully false. (1878) *Germ. Sav. Bk. v. Archbold*, 15 Blatch. 398.

There being no provision as to Schedule B analagous to that for post-stamping under A, it was ruled that voluntary disclosure, within the calendar month, of a liability would avoid the penalty. T. D. 239, Nov. 3, 1900.

A discussion of forfeitures is found in (1899) *U. S. v. Two Barrels Whiskey, C. C. A.*, 96 Fed. Rep. 479, where a team and wagon being used without the owner's knowledge to facilitate a revenue fraud, were not forfeited.

Cf. (1904) *U. S. v. One Black Horse*, 129 Fed. Rep. 167, where a liveryman's horse and wagon were forfeited for a similar use of them without the owner's knowledge. The court suggested

that the claimant should pursue the offender or seek remission from the government.

Contracts made for the purpose or with intention to evade revenue laws are illegal at common law, but only where both parties are parties to the intentional wrong. (1826) *Armstrong v. Toler*, 11 Wheat. 258; (1850) *Kreiss v. Seligman*, 8 Barb. 439.

All offenses against revenue laws are purely statutory. There are no common-law offences against the United States. (1891) *U. S. v. Eaton*, 144 U. S. 677, 687.

The penalties imposed do not exclude personal liability. They are imposed to induce payment of a debt and are not a substitute for payment. Both on general principles and because the Act of 1898, c. 448, extended R. S. § 3213, to the war tax, the government may sue in a civil action to recover a stamp tax underpaid on a deed. (1911) *U. S. v. Chamberlin*, 219 U. S. 250; (1900) *Fleshman v. McClain*, 105 Fed. Rep. 619; 106 Fed. Rep. 880.

Revenue officers are liable in damages for wrongful seizures, but where the court certifies probable cause the recovery is paid from the treasury. R. S. § 989; (1904) *Haymes v. Brown*, 132 Fed. Rep. 525; (1905) *Agnew v. Haymes*, 141 Fed. Rep. 631.

Department rules and regulations cannot be relied upon as affecting rules of evidence in court. (1904) *U. S. v. Cole*, 134 Fed. Rep. 697.

The burden of proving that a special tax has been paid rests on the accused. (1868) *U. S. v. Devlin*, 6 Blatchf. 71.

The imposition of a fine or a forfeiture does not preclude the superimposition of the other. (1904) *U. S. v. 7 Bbls. of Whisky*, 131 Fed. Rep. 806.

Stamps and marks on packages of spirits are not in any respect intended to protect purchasers, but only to prevent fraud and obtain revenue; and a dealer may be penalized or suffer forfeiture for wrong marking even although the stamps used are excessive for the quantity of liquor. *Id.* See R. S. §§ 3289, 3323.

Attempts have been made to claim a sort of estoppel against the government by reason of real or purported statements or acts of officials. See (1904) *Christie-Street Co. v. U. S.*, 129 Fed. Rep. 506.

"The government would be in a sorry plight if the neglects, the careless speeches, and self-excusing or self-serving statements

of its ministerial officers or agents could create waivers and estoppels in suits by and against the government." Phillips, D. J.

An absence of wrong intent will not save butter with an abnormal absorption of water from being classed as adulterated, under the Oleomargarine Act, May 2, 1902, c. 784, 32 Stat. 194. (1908) *Coopersville Co. v. Lemon*, 163 Fed. Rep. 145.

A grocer who sold oleomargarine was held a taxable retail dealer, although he honestly supposed he was selling butter. (1899) *Eagle v. Nowlin*, 94 Fed. Rep. 646.

But see (1911) *U. S. v. 11150 Pounds of Butter*, 188 Fed. Rep. 157; (1912) 195 Fed. Rep. 657.

"The law is not so unreasonable as to attach culpability, and consequently to impose punishment, where there is no intention to evade its provisions, and the usual means to comply with them are adopted. All punitive legislation contemplates some relation between guilt and punishment. To inflict the latter where the former does not exist would shock the sense of justice of everyone." Field, J., in (1877) *Felton v. U. S.*, 96 U. S. 699, 703, action for penalty for defective arrangement of a distilling plant.

Further, on intent, see (1873) *U. S. v. Buzzo*, 18 Wall. 125 (stamp tax; (1869) *In re Quantity of Spirits*, 3 Ben. 552; Fed. Cas. 11495, as to "knowingly and wilfully."

No question of intent is involved in a prosecution under R. S. § 3449. It is a violation to ship liquors marked outside as "groceries." (1907) *U. S. v. Liquor Dealers*, 156 Fed. Rep. 219.

Nor under § 3324 for failure to efface stamps and marks when emptying a cask of spirits. (1910) *U. S. v. Gallant*, 117 Fed. Rep. 281. Cf. (1908) *U. S. v. Rogers*, 164 Fed. Rep. 520.

To have in possession a stamp which has accidentally fallen off a package is an offense under R. S. § 3324, but not under the Act of March 1, 1879. (1885) *U. S. v. Spiegel*, 116 U. S. 270.

A wrongful act by one partner in the course of business makes all partners liable to the penalty. Under old Rev. Stat. c. 47. (1866) *U. S. v. Thomasson*, 4 Biss. 99.

So as to double penalty for illegal importations. (1849) *Commonwealth v. Sloan*, 4 Cush. 52.

Joint indictment of partners for false returns. (1866) *U. S.*

v. McGinniss, 1 Abb. U. S. 120, cited also as U. S. v. Montjoy, 3 Int. Rev. Rec. 83, Fed. Cas. 15,678.

An employer is responsible for wrongful act of employee only when the act is within the scope of employment. (1832) U. S. v. Halberstadt, Gilp. 262, Fed. Cas. 15,276.

Protest, Reclamation and Recovery.

As was said, or implied, in the Introductory, a tax collector may not be given discretionary power. Despite the demand in the Senate for the repayment to certain States of a cotton tax collected 1862-1868, where the Supreme Court split even on constitutionality of the law, the Federal government usually pays back what it improperly takes from citizens.

No Suit May Be Brought to Restrain a Tax. R. S. § 3224.

Recovery and refund are provided for. R. S. §§ 3220-3231.

Appeal must first be made to the commissioner. R. S. §§ 3220, 3226.

The appeal may be lodged with the local collector. (1881) U. S. v. Savings Bk., 104 U. S. 728.

The limitations for claims is two years. R. S. §§ 3227, 3228. (1883) James v. Hicks, 110 U. S. 272.

Congress has at times extended the time for reclaims of taxes wrongly collected. E. g. under Act of 1898. See Act of July 27, 1912.

Claimants are not very strictly held to the need of formal protest. It may be constructive or implied. (1907) Johnson v. Herold, 161 Fed. Rep. 593. See (1913) Abrast Realty Co. v. Maxwell, 206 Fed. Rep. 333; (1880) Real Est. Bk. v. U. S., 16 Ct. Cls. 335. See also as to protest: (1908) Herold v. Kahn, 159 Fed. Rep. 608; (1903) Cheseborough v. U. S., 192 U. S. 253; (1906) N. Y. & Cuba Mail v. U. S., 200 U. S. 488.

Department Regulations No. 14, as revised, give instructions as to preparing claims.

The commissioner may compromise, with or without suit, civil or criminal. R. S. § 3229.

Taxes voluntarily paid, without protest or notice, cannot be recovered. (1904) Cheseborough v. U. S., 192 U. S. 253. In this case the claimant had bought stamps and used them on a conveyance and subsequently sought to attack the constitutionality of the law (Act of June 13, 1898). Both in this case and another

(where the stamps were used on the manifest of a vessel in order to obtain the clearance required by statute) the question of duress was unsuccessfully raised. (1906) *U. S. v. N. Y. and Cuba Mail*, 200 U. S. 488; 125 Fed. Rep. 320. And see (1884) *Swift Co. v. U. S.*, 111 U. S. 22 (match tax under Act of 1870, ch. 255, § 4). (1903) *Christie Street Co. v. U. S.*, 126 Fed. Rep. 991, 994; (1901) *Fairbank v. U. S.*, 181 U. S. 283; (1913) *Merck v. Treat*, 202 Fed. Rep. 133.

Special Acts of Congress are sometimes passed to refund overpaid stamp taxes, such as stamps from private dies. Cf. Act of Feb. 24, 1905.

Unlawful exaction may subject a collector as tortfeasor to an action of trespass, or for damages sounding in tort. See (1904) *Christie v. U. S.*, 129 Fed. Rep. 506.

As to recovery from the government under R. S. § 3226 by appealing to the department for restitution, see (1904) *Christie v. U. S.*, *supra*; (1875) *Cheatham v. U. S.*, 92 U. S. 85; (1881) *U. S. v. Sav. Bank*, 104 U. S. 728; (1883) *Snyder v. Marks*, 109 U. S. 189; (1891) *Comr. Louisville v. Buckner*, 48 Fed. Rep. 533; (1885) *Kings Co. Sav. Inst. v. Blair*, 116 U. S. 200.

The remedy under R. S. § 3226, must be pursued subject to the conditions and limitations in the statute. In the absence of such statute there would be no such remedy. (1903) *Christie-Street v. U. S.*, 126 Fed. Rep. 991, sustaining demurrer and again (1904) 129 Fed. Rep. 506, sustaining amended petition.

As to when interest will be allowed on a recovery back from the government, see (1914) *Klock Produce Co. v. Hartson*, 212 Fed. Rep. 758.

Interest allowed in judgment for recovery of taxes wrongfully collected against protest and promptly reclaimed by suit. (1900) *Penna. Co. for Ins. v. McClain*, 105 Fed. Rep. 367, affirmed 106 id. 618.

Delay in prosecuting the reclaim affects the right to interest. (1900) *Burrough v. Abel*, 105 Fed. Rep. 366.

As to recovery of legacy tax (Act 1898, c. 448; 30 Stat. 448) from executor or legatee or the property, and by what proceedings, see (1914) *U. S. v. Priest*, 210 Fed. Rep. 332; (1911) *U. S. v. Fidelity Trust Co.*, 222 U. S. 158; on refunding inheritance tax (Acts of 1898, c. 448; 1902, c. 1160); distinguishing (1905) *Vanderbilt v. Eldman*, 196 U. S. 480.

A broker who sues to recover taxes wrongfully collected must be able to set forth in his bill or a bill of particulars all the transactions in question. (1905) *Haight & Freese v. McCoach*, 135 Fed. Rep. 894.

A person who is in fact liable for a special tax cannot recover one he has paid on the ground of defective or illegal assessment. (1907) *Craft v. Schafer*, 153 Fed. Rep. 175.

As to lost stamps. (1896) *U. S. v. American Tobacco*, 166 U. S. 468; (1903) *Cheeseborough v. U. S.*, 192 U. S. 253; *Freeman v. U. S.*, 157 Fed. Rep. 195.

Existing Laws Made Applicable; Construction of Tax Laws.

The present emergency Act makes a large and important addition to existing statute law, but it repeals none.

In a general way, the provisions here made applicable are to be found in R. S. Title XXXV, especially ch. 2, as to assessment and collection. The revision is, however, so old, and there are so many separate statutes (not always carefully drafted to fit into the scheme), that it is often difficult to ascertain the present state of the law. The easiest quick method, in connection with the internal revenue system, is to examine the official compilation issued by the department in 1911, where an attempt is made to sandwich the new, and the amendatory, laws among the sections of the R. S. In several of the cases cited in this book, on construction and interpretation, the courts have carefully traced the statute law affecting the matters under consideration.

In the main, the department will, in collecting this new emergency tax, at least follow its own relatively recent precedents (from the war revenue of 1898), even if these are not always followed by the courts. See *ante*, Introductory and *post*, in this chapter. The commissioner has large powers under R. S. § 3447, as to establishing methods where none is provided, and "making such regulations as may have become necessary by reason of any alteration of law in relation to internal revenue."

There is some confusion, not so much in the decisions reached as in the language of opinions, regarding the way in which tax laws should be construed. A statute may impose a forfeiture or other penalty, and yet not be, technically speaking, a penal law. Revenue acts are not, technically, penal laws. Their penalties

are imposed primarily to prevent fraud and accomplish a public good. (1845) *Taylor v. U. S.*, 3 How. U. S. 197.

Revenue laws are not like penal laws, to be strictly construed, but should be construed fairly and reasonably. (1904) *U. S. v. Cole*, 134 Fed. Rep. 697; (1901) *Eidman v. Martinez*, 184 U. S. 578 and cases cited.

Revenue laws are remedial, rather than penal, and a defendant is not to be favored. (1865) *Cliquot's Champagne*, 3 Wall. 114, 145; (1889) *U. S. v. Stowell*, 133 U. S. 1, 12; (1900) *U. S. v. 246 1-2 Pounds Tobacco*, 103 Fed. Rep. 791.

Revenue laws are to be construed in a way to favor their enforcement. (1845) *Taylor v. U. S.*, 3 How. U. S. 197; (1874) *Smythe v. Fiske*, 23 Wallace, 374, 380; (1832) *U. S. v. Breed*, 24 Fed. Cas. 1222, No. 14,638; (1870) *U. S. v. Hodson*, 10 Wallace, 395; (1887) *Chicago, W. & St. P. v. U. S.*, 127 U. S. 406.

License taxes should receive a reasonable construction, fair to both parties. (1900) *De Bary v. Souer*, 101 Fed. Rep. 425; (1911) *John J. Sesnon v. U. S.*, 220 U. S. 609, denying certiorari on 182 Fed. Rep. 573.

The courts, perhaps not always consciously, *feel* that there is a difference among revenue laws, and that, whatever the precise language may be, some offenses are more serious than others. It is not intended to say that judges deliberately permit either their own temperamental attitudes or their views of public opinion unduly to influence them. Psychologists know that the will to do right and the desire to think straight do not make up all the powers and susceptibilities of the human spirit. Sympathy is best excluded from judgment by recognition of the paramount necessity for uniform and certain justice.

Attempts have been made to group such laws, as to the degree of strictness of interpretability, into those which do, and those which do not, impose forfeitures and quasi-criminal penalties. In some instances of stamp taxes, however, as where an unstamped instrument is excluded from evidence or record, or as a check which cannot be cashed, there is obviously small need of judicial severity in imposing even statutory penalties. On the other hand, regulative or quasi-police power taxes, even when the statute is not expressly more severe (as it generally is), are inevitably regarded by all public law officers as penal or quasi-penal.

It is a settled rule that general comprehensive legislation on a subject is not superseded by later special or narrower legislation unless the contrary clearly appears. Revised Statutes, title XXXV, contains such general laws. Any new enactment imposing internal revenue taxes is assumed to have contemplated the existence of the established system of revenue laws to which resort may be had in carrying the new law into effect. (1912) *U. S. v. Barnes*, 222 U. S. 513, holding R. S. § 3177 applicable to oleomargarine.

The letter of the law sometimes crowds the spirit, as in the case of the peddler who had a license but failed to post his name, residence or number conspicuously on his vehicle or his goods. He was convicted (upheld on appeal), although he was a walking peddler and carried his wares in his pocket. (1876) *Commonwealth v. Cusick*, 120 Mass. 183.

A construction adopted and applied by an executive officer is entitled to much weight in order to avoid conflict between two departments in executing a law. (1865) *Hugus v. Strickler*, 19 Iowa, 413; (1865) *Smith v. Waters*, 25 Ind. 397; (1896) *In re Mdse. Imported by Hoyt*, 75 Fed. Rep. 998; (1901) *Fairbank v. U. S.*, 181 U. S. 283, 308, where there is a full discussion of the value of contemporaneous exposition and departmental construction of statutes, by Brewer, J. And see cases on the value of the commissioner's rulings, *ante*, Introductory.

English courts recognize usages of the stamp office as a practical commentary on the law, although not conclusive. *Edwards on The Stamp Act*, p. 9; *Tilsley on Stamp Laws*, p. 10.

The court (C. C. A., 3d Ct.), in (1901) *McClain v. Penna., etc., Co.*, 108 Fed. Rep. 618, 620, passing on the War Tax of 1898, said: "If we were not fully convinced of the correctness of the views we have expressed, all doubt upon the subject would be removed by consideration of the fact that the War Revenue Act of 1864, the tax imposing language of which was, so far as material, precisely the same as that of the present Act, had been officially administered in accordance with our understanding of the effect of that language, and this established construction of it must be presumed to have been known to Congress when it again used the same language in the Act of 1898." And see (1904) *James v. Appel*, 192 U. S. 129, 135; (1898) *U. S. v. Wong Kim Ark*, 18 Sup. Ct. Rep. 456. But cf. (1873) *Dollar Sav. Bk. v. U. S.*, 19 Wall. 227.

As to what influence congressional proceedings on a bill should have in interpreting an Act, see 27 Opin. Atty.-Gen. 68, and (1875) U. S. v. Union Pacif. R. R. Co., 91 U. S. 72.

"What the lawmakers intended to do is immaterial when what they actually did do is free from doubt." Cox, C. J., in (1904) N. Y. Telephone v. Treat, 130 Fed. Rep. 340, 342.

Revised Statutes, § 3449, as to shipping liquors under other than proper names and marks, is highly penal in character and should be construed strictly. (1902) U. S. v. 20 Boxes, 123 Fed. Rep. 135, affirmed (1904) 133 id. 910.

In deciding that the shipper of a quantity of corn liquor in boxes marked "glass; this side up with care," did not violate R. S. § 3449, McDowell, D. J., uses this *strange* language: "If the statute applies to all persons, a farmer or *lawyer*, moving his place of residence, and marks the box 'household goods,' is liable to a fine of \$500 . . . whether one bottle or a *large quantity* are thus moved." (*Italics ours.*—Why "*lawyer*?")

The construction should be fair to, if not in direct favor of, the taxpayer. (1902) McNally v. Field, 119 Fed. Rep. 445, 448 (stamp tax of 1898); (1902) U. S. v. Mullins, 119 Fed. Rep. 334 (tax on spirits); (1904) Benziger v. U. S., 192 U. S. 38, 55 (tariff); (1896) Mutheson & Co. v. U. S., 71 Fed. Rep. 394 (tariff); (1893) Rice & Co. v. U. S., 53 Fed. Rep. 910 (tariff); (1891) American Twine Co. v. Worthington, 141 U. S. 468, 474 (tariff); (1887) Hartranft v. Wiegmann, 121 U. S. 609, 616 (tariff); (1873) U. S. v. Isham, 17 Wall. 496 (stamp tax of 1864); (1870) U. S. v. Hodson, 10 Wall. 395 (distiller); (1868) U. S. v. Olney, 1 Abb. U. S. 275 (lottery).

Stamp laws are *positivi juris*, involving nothing of principle or reason. (1834) Morley v. Hall, 2 Dowl. 494. They are to be construed strictly, with liberality as to exceptions. (1827) U. S. v. Gooding, 12 Wheat. 460. (1807) Warrington v. Furber, 8 East. 242. The government will not be given the benefit of an uncertain law. (1855) Gurr v. Scudds, 11 Exch. R. (H. & G.) 190; (1828) Doe v. Amos, 2 M. & R. 180.

Stamp laws have been held directly penal, in restraint of common right and to be construed strictly. (1865) Hugus v. Strickler, 19 Iowa, 413; (1864) Celley v. Gray, 37 Vt. 136; (1868) Boyd v. Hood, 57 Pa. 98; (1867); Vail v. Knapp, 49 Barb. 299; (1869) New Haven, etc., Co. v. Quintard, 31 How. Pr. 29.

"A thing may be within the letter of a statute and not within its meaning, and within its meaning, though not within its letter. The intention of the lawmaker is the law." (1874) *Smythe v. Fiske*, 23 Wall. 374, 380, holding that revenue laws are to be construed liberally, as not being rigidly penal.

"In cases of serious ambiguity in the language of the Act, or doubtful classification of articles, the construction is to be in favor of the importer, as duties are never imposed on the citizen upon vague or doubtful interpretations." (1863) *Powers v. Barney*, 5 Blatchf. 202 (tariff). And see (1873) *U. S. v. Isham*, 17 Wall. 496, 504; (1886) *Hartranft v. Weigmann*, 121 U. S. 609; (1855) *Gurr v. Scudds*, 11 Exch. R. (H. & G.) 190; (1828) *Doe v. Amos*, 2 M. & R. 180.

It is constitutional to increase an excise as well as a property tax, and such an increase may be made at least while the property is held for sale and before it has passed into the hands of the consumer. (1902) *Patton v. Brady*, 184 U. S. 608, a tobacco case, with an interesting general discussion of excise law in the opinion of Brewer, J.

Held, under the Act of 1898, that tax stamping of tobacco in the factory at the old rate was a constructive removal and warranted the assessment of the additional tax. (1900) *Robards Tobacco Co. v. Franks*, 103 Fed. Rep. 276, affirmed, 112 id. 784.

Congress may tax anything except exports; but its direct taxes must be apportioned, and its indirect taxes must be uniform. (1866) *License Tax Cases*, 5 Wall. 462, occupation tax, Act of 1864; (1894) *Income Tax Cases*, 157 U. S. 429, income tax of 1894; (1898) *Nicol v. Ames*, 173 U. S. 509, war tax 1898, sale on exchange; (1880) *Springer v. U. S.*, 102 U. S. 586, income, Act of 1864, 1865; (1903) *Spreckles v. McClain*, 192 U. S. 397, 48 L. R. A. 496, on sugar refining, 1898; (1868) *Pacific Ins. Co. v. Soule*, 7 Wall. 433, income tax, Acts of 1864, 1866.

But the federal government may not tax either the property or the instrumentalities of a State. (1894) *Pollock v. Trust Co.*, 157 U. S. 429, 584. And see notes, *ante*, under § 15.

Further, as to constitutionality of internal revenue laws, see (1903) *Thomas v. U. S.*, 192 U. S. 363, 48 L. Ed. 481, as to memorandum of stock sale; (1901) *Bettman v. Warwick*, 108 Fed. Rep. 46, as to a notary public's official bond; (1901) *Dougherty v. U. S.*, 181 U. S. 622, 45 L. Ed. 1033, as to oleomargarine; (1910) *Flint v. Stone Tracy Co.*, 220 U. S. 107, 55 L. Ed. 389, as to cor-

poration excise tax; (1901) *Patton v. Brady*, 184 U. S. 608, 46 L. Ed. 713, as to the increased tobacco tax under the Act of 1898; (1905) *South Carolina v. U. S.*, 199 U. S. 437, 50 L. Ed. 261.

Sec. 24. That the provisions of this Act shall take effect on the day next succeeding the date of its passage, except where otherwise expressly provided: *Provided*, That on the day after the thirty-first day of December, nineteen hundred and fifteen, the taxes levied under this Act shall no longer be levied and collected, but all taxes arising or accruing before said date shall continue to be collectible under the terms of this Act: *Provided, however*, That on and after the first day of January, nineteen hundred and sixteen, the provisions of section thirty-three hundred and thirty-nine of the Revised Statutes, as amended by an Act approved April twelfth, nineteen hundred and two, imposing a tax on fermented liquors shall not be affected by any limitation as to the levying or collecting of the additional tax imposed by this Act on such fermented liquors, but shall then be in full force and effect on and after the said first day of January, nineteen hundred and sixteen. All stamps provided for in this Act unused after the aforesaid date shall be redeemed from the holder thereof, under such rules as the Secretary of the Treasury may prescribe.

Approved, October 22, 1914.

When the Act Takes Effect; When the Taxes Cease.

As the Act was approved October 22, 1914, it became generally operative, in effect, at midnight of that day. This applied to the beer and wine taxes, §§ 1, 2.

The special taxes were imposed as on November 1, 1914. This applies to all the occupation or license taxes, § 3.

The documentary stamp taxes were levied as on December 1, 1914, § 5.

The merchandise stamp taxes attach to taxable articles on November 21, 1914 (§ 21), though the general imposition section (§ 5) and the general penalty section (§ 17) fix December 1, 1914.

All taxes imposed by this Act cease on December 31, 1915, but taxes which accrue before that date may be enforced thereafter. Cf. notes under § 11.

A repeal does not extinguish a penalty or liability once incurred, and the law remains valid for enforcement. R. S. § 13; (1888) U. S. v. Reisinger, 128 U. S. 398; (1910) Hertz v. Woodman, 218 U. S. 205; (1873) Stockdale v. Insurance Cos., 20 Wall. 323; (1874) Blake v. Natl. Banks, 23 Wall. 307, 3 Fed. Stat. Annotated, 762.

As to enforcing a repealed tax, and as to whether a beneficial interest in an estate is vested and taxable, see also (1904) Land Title & Trust v. McCoach, 127 Fed. Rep. 381, 129 Fed. Rep. 901; (1904) Phila. Trust v. McCoach, 127 Fed. Rep. 386, 135 Fed. Rep. 866, 129 Fed. Rep. 906, affirmed (1906) 203 U. S. 594, no opinion; (1904) Brown v. Kinney, 128 Fed. Rep. 310; (1904) Peck v. Kinney, 128 Fed. Rep. 313; (1905) Eidman v. Tilghman, 136 Fed. Rep. 141, affirmed (1906) by divided court, 203 U. S. 580, no opinion.

The proviso in § 24, as to fermented liquors, was necessary because of the form of language used in § 1. Instead of imposing an *additional* tax as such, or merely changing the rate, it imposes the increased tax *in lieu of* the former tax. The purpose of the proviso is, therefore, to insure the automatic restoration of the former tax on January 1, 1916.

Although the Act was planned as an emergency measure, and was in good faith passed as such in the hope that the taxes would not longer be required, it was latterly distinctly intimated in Congress that the time limitation might have to be removed or advanced. It is likely that, if more revenue is needed, it may be sought by further increasing the beer tax, and by adding taxes on rectified spirits and automobiles or gasoline. All these things were in contemplation and under discussion while the present

measure was in preparation. Tobacco products, proprietary medicines, bank checks, deposit slips, bills of exchange, leases and mortgages are also among the probable objects.

Outlying and Insular Possessions.

Revised Statutes, § 3448, applies the existing laws to spirits, liquors, tobacco, snuff and cigars, produced anywhere within the exterior boundaries of the United States whether or not within a revenue district.

Alaska was made part of the Oregon district in 1872.

Indian lands are included, despite treaties. (1883) U. S. v. 43 Gals. Whisky, 108 U. S. 491.

The U. S. internal revenue system as a whole, does not apply to **Porto Rico**. Under the Foraker Act, April 12, 1900, c. 191 (31 Stat. 77), each country receiving goods from the other collected its own internal revenue on shipment from each to the other in lieu of tariff dues. (1913) *Jordan v. Roche*, 228 U. S. 436.

The Foraker Act was held constitutional. (1900) *Downes v. Bidwell*, 182 U. S. 244, in imposing duties on imports, as the island was not a part of the U. S. for revenue purposes.

Porto Rico has her own system of excise, for her own benefit, in lieu of the internal revenue system of the U. S. A general revenue bill was enacted by the insular legislature, approved January 31, 1901, imposing taxes on spirits, tobacco, cards, medicinal preparations, oleomargarine, arms and ammunition, matches, liquor dealers and certain documentary stamp taxes. Dr. Jacob H. Hollander, *Excise Taxation in Porto Rico*, in the *Quarterly Journal of Economics*, February, 1902.

Section 14 of the Foraker Act makes U. S. laws effective in Porto Rico, "except the internal revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico." T. D. 216, Sept. 25, 1900.

Section three of the same Act imposes on P. R. goods coming into U. S. the same internal revenue taxes as are imposed by law on domestic goods.

Porto Rico cigars brought to the U. S. require the same stamps here as domestic cigars. Circulars 54 and 56, April, 1900; 81, July, 1901; 85, Aug., 1901.

As to bay rum brought from P. R. (1908) *Newhall v. Jordan*, 160 Fed. Rep. 661, following *Cheseborough v. U. S.*, 192 U. S. 253., that a tax paid by mistake cannot be recovered. S. c. (1906) 149 Fed. Rep. 586; (1908) *Anderson v. Newhall*, 161 Fed. Rep. 906; (1913) *Jordan v. Roche*, *supra*. See Act of Feby. 4, 1909, ch. 65; T. D. 1462, 1481; circular No. 734.

There is a deputy U. S. collector at San Juan. Act of June 29, 1906; T. D. 1031; circular No. 679. See Tariff Act of 1913, c. 16, Oct. 3, § 4, subd. D.

Porto Rico is now American territory *de facto* and *de jure*. (1907) *Ponce v. R. C. Church*, 210 U. S. 296.

The Treasury Department has issued circulars, e. g., Nos. 57, 59, 606, 693.

The internal revenue laws of the island are found in chs. 2, 3 of Tit. IX of the Political Code, §§ 3024-3090 of Revised States of Porto Rico, 1911.

Under the organic Act of April 30, 1900, ch. 339; 31 Stat. 141., the Territory of Hawaii was made a revenue district. From the annexation (July, 1898) to June 14, 1900, when the organic Act took effect, Hawaii was, as to commercial relations, deemed foreign territory. After June 14, 1900, goods taxable for internal revenue in this country could not be sent to Hawaii without paying this tax. T. D. 120, May 5, 1900; 125, May 12, 1900; 157, June 14, 1900. (1857) *Simpson v. Peaslee*, 20 How. 571, was cited to support the ruling that the date of the sailing of the ship would determine whether a consignment was taxable. (1904) *The Kawaiiani*, 128 Fed. Rep. 879.

Philippines.

From the ratification of peace, April 11, 1899, to November, 1901, the islands were commercially treated as foreign, though certain taxable articles might be bonded for consumption there. The Supreme Court decided that they were not foreign after their cession, and they thus acquired a status like Porto Rico's. (1901) *Pepke v. U. S.*, cited also as 14 Diamond Rings, 183 U. S. 176.

A temporary civil government was established pursuant to the Act of March 2, 1901, 31 Stat. 910, and the Act of July 1, 1902, 32 Stat. 691, which exempted certain exports to the P. I. and allowed rebates or drawbacks as on exports to strictly foreign countries.

Taxable materials were exempted for export by the Act of March 8, 1902, 32 Stat. 54.

The Philippine Commission enacted The Internal Revenue Law of 1904 (July 2) for the islands. They have their own bureau and a complete administrative machinery for the enforcement of an elaborate law covering license taxes, alcohol, tobacco, banking, documentary stamp taxes, capitation tax, insurance, forestry, mining, business, manufacture and occupation. Internal taxation in the Philippines. By John S. Ford, Baltimore, 1907, Johns Hopkins University Studies, Series XXV, No. 1.

The U. S. Congress ratifies the acts of the Commission. See Act of Feb. 9, 1909, c. 101.

The Act of Aug. 5, 1909, 36 Stat. 83, equalized duties; exempted from the P. I. internal revenue laws taxable articles for export to the U. S. (where they pay a revenue tax in lieu of customs; exempted from U. S. internal revenue laws taxable articles for export to the islands (where they pay a revenue tax), and provided that all internal revenue collected in or for account of the islands should go intact to the insular treasury for the general government of the Philippines.

The Tariff Act of 1913, Act of Oct. 3, c. 16, re-embodies a like system.

The Treasury Department has issued rulings and instructions, circulars No. 39, July 1, 1910; No. 57, Nov. 1, 1909; No. 37, Aug. 10, 1909; No. 8, regulations revised to July 1, 1910.

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These are, of course, only suggestive, and do not purport to be exhaustive.

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SUMMARY TABLE OF TAXES.

Beer, ale, porter, on every barrel of 31 gals..	\$1.50
Wines, domestic and imported:	
Still wines:	
bottle, $\frac{1}{4}$ pint or less.....	.00 $\frac{1}{4}$
bottle, $\frac{1}{2}$ pint or less.....	.00 $\frac{1}{2}$
bottle, 1 pint or less.....	.01
bottle, 1 quart or less.....	.02
other containers at the gallon rate of...	.08
Sparkling wines and champagnes:	
bottle, $\frac{1}{2}$ pint or less.....	.05
bottle, 1 pint or less.....	.10
bottle, 1 quart or less.....	.20
other containers, at the quart rate of....	.20
Liqueurs, cordials, etc.:	
bottle, $\frac{1}{2}$ pint or less.....	.01 $\frac{1}{2}$
bottle, 1 pint or less.....	.03
bottle, 1 quart or less.....	.06
other containers, at gallon rate of.....	.24
Grape brandy or wine spirits, used only for fortifying sweet wines under strict regula- tions, per gallon.....	.55
Special, occupation or license taxes, annual:	
banker, on each \$1,000 capital, including surplus and undivided profits.....	1.00
stock broker, etc.....	30.00

pawnbroker.	\$50.00
commercial broker	20.00
custom-house broker	10.00
theatre, etc., proprietor:	
seating capacity not more than 250.	25.00
seating capacity, 251 to 500.	50.00
seating capacity, 501 to 800.	75.00
seating capacity, 801 and up.	100.00
circus, proprietor, in each State.	100.00
Other shows, exhibitions, etc., proprietor or agent, in each State: (Educational, agricultural, etc., exempt)	10.00
Bowling and billiards, proprietor, for each alley and each table.	5.00
Commission merchant, except those paying as commission broker and co-operative houses.	20.00
Tobacco dealers:	
leaf dealers up to 1,000 lbs., annually.	exempt
leaf dealers, 1,000 to 50,000 lbs. annually.	6.00
leaf dealers, 50,000 to 100,000 lbs. annually.	12.00
leaf dealers, over 100,000 lbs. annually.	24.00
dealers generally in any form of tobacco, whose annual sales exceed \$200.	4.80
Manufacturer selling own goods at factory is not a dealer.	
Tobacco manufacturers: One tax for maker of several kinds.	
sales not exceeding 100,000 lbs annually.	6.00
sales, 100,000-200,000 lbs. annually.	12.00
sales, 200,000-400,000 lbs. annually.	24.00

sales, 400,000–1,000,000 lbs. annually....	\$60.00
sales, 1,000,000–5,000,000 lbs. annually..	300.00
sales, 5,000,000–10,000,000 lbs. annually..	600.00
sales, 10,000,000–20,000,000 lbs. annually.	1,200.00
sales exceeding 20,000,000 lbs. annually..	2,496.00

Cigar manufacturers:

sales not exceeding 100,000 cigar annually.	3.00
sales, 100,000–200,000 cigars annually...	6.00
sales, 200,000–400,000 cigars annually...	12.00
sales, 400,000–1,000,000 cigars annually..	30.00
sales, 1,000,000–5,000,000 cigars annually.	150.00
sales, 5,000,000–20,000,000 cigars annually	600.00
sales, 20,000,000–40,000,000 cigars an- nually.	1,200.00
sales, 40,000,000 and up.....	2,496.00

Cigarette manufacturers:

annual sales, not above 1,000,000 cigarettes	12.00
annual sales, 1,000,000–2,000,000.....	24.00
annual sales, 2,000,000–5,000,000.....	60.00
annual sales, 5,000,000–10,000,000	120.00
annual sales, 10,000,000–50,000,000	600.00
annual sales, 50,000,000–100,000,000....	1,200.00
annual sales exceeding 100,000,000.....	2,496.00

STAMP TAXES.

Schedule A. Documentary:

bonds, stock certificates, etc., on each \$100 face value	.05
stock, every sale, transfer, delivery, etc., on each \$100 face value or less.....	.02
sale of products on exchange or board, mem-	

orandum required, tax on each \$100 of value (immediate deliveries exempt)...	\$0.01
promissory note and renewal, on each \$100.	.02
express and freight: Bill of lading required when over five cents: For each shipment.	.01
telegraph and telephone: On each message costing 15 cents or more, tax to be paid in addition to the tariff.....	.01
bond of indemnity; any bond.....	.50
certificate of profits, corporate, on each \$100	.02
certificate of damage and maritime.....	.25
certificate, every other required by law....	.10
broker's note or memorandum of sale, any kind.	.10
conveyance or deed, on value of the equity of redemption, from \$100 to \$500.....	.50
each additional \$500 or fraction.....	.50
entry, custom house, for consumption or warehousing:	
not exceeding \$100 of value.....	.25
value, \$100 to \$500.....	.50
value exceeding \$500.....	1.00
entry, customs bonded warehouse withdrawal.....	.50
insurance, except life, personal accident, health, workmen's, and co-operative:	
on every dollar of premium, original or renewal.....	.001½
passage ticket sold in U. S. for abroad:	
costing \$10 or less.....	exempt
costing \$30 or less.....	1.00

costing \$30 to \$60.....	\$3.00
costing more than \$60.....	5.00
proxy for company meeting.....	.10
power of attorney.....	.25
protest	.25
parlor car seat.....	.01
sleeping car berth.....	.01

Schedule B. Mercantile:

Perfumery, cosmetics, etc., see p. 106.

every package retailing at 5 cents or less..	.001 $\frac{1}{8}$
every package above 5 cents, not above 10 cents.	.001 $\frac{1}{4}$
every package above 10 cents, not above 15 cents.	.003 $\frac{3}{8}$
every package above 15 cents, not above 25 cents.	.005 $\frac{5}{8}$
every package each additional 25 cents of price.	.005 $\frac{5}{8}$
chewing gum or substitutes:	
every package not exceeding \$1.00 retail value.	.04
every package above \$1.00 for each \$1.00 or part	.04

TABLE OF CASES.

TABLE OF CASES.

A.

Abraham v. Dubois, 4 Campb. 269.....	64
Abrast Realty v. Maxwell, 206 Fed. Rep. 333.....	46, 117
Adams v. Dale, 29 Ind. 273.....	49, 54
Adams Exp. Co. v. N. Y., 232 U. S. 14.....	25
Agnew v. Haynes, 141 Fed. Rep. 631.....	115
Aiken v. Blaisdell, 41 Vt. 655.....	25
Ambrosini v. U. S., 187 U. S. 1.....	97
American Exp. v. Mich., 177 U. S. 404.....	93, 94
Americ. Sugar Ref. Co. v. La., 179 U. S. 89.....	23
Amer. Twine Co. v. Worthington, 141 U. S. 468.....	122.
Amos-Richia Co. v. N. W. Mut. L., 143 Mich. 684.....	66
Anderson v. 42 Broadway, 213 Fed. Rep. 777.....	xxvi
Anderson v. Newhall, 161 Fed. Rep. 906.....	127
Armour Packg. Co. v. Lacy, 200 U. S. 226.	23
Armstrong v. Toler, 11 Wheat. 258.....	115
Ashling v. Boon, 1 Ch. 568.	56.
Atlantic, etc., Co. v. Savannah, 133 Ga. 66.....	45.

B.

Bailey v. Clark, 21 Wall. 284, 12 Blatchf. 156.....	27
Baker v. Baker, 6 Lansing, 509.....	63
Ballard v. Burnside, 49 Barb. 102.....	47, 54, 93
Barbour v. Gates, 43 N. Y. 40.....	66
Barney v. Ivins, 22 Iowa, 163.....	101
Bates v. Mobile, 46 Ala. 158.....	26
Bathe v. Taylor, 15 East. 412.....	47
Bayly v. McKnight, 19 La. Ann. 321.....	47
Becker, In re, 21 I. R. R. 243; Fed. Cas. 1208.....	112.
Beckwith v. Benner, 6 Carrington & P. 681.....	56.

(References are to Pages.)

Beebe v. Hutton, 47 Barb. 187.....	65
Bennison v. Jewison, 12 Jur. 485.....	64
Benziger v. U. S. 192 U. S. 38.....	122
Bettman v. Warwick, 108 Fed. Rep. 46.....	123
Black v. 6th Ave. R. R., 1 Daly, 536.....	109
Blackford v. State, 8 Heisk. 538.....	35
Blacklock v. U. S., 208 U. S. 75.....	113
Blake v. Natl. Banks, 23 Wall. 307.....	125
Blunt v. Bates, 40 Ala. 470.....	55
Boske v. Comingore, 177 U. S. 459.....	xiv
Bowker v. Goodwin, 7 Nev. 135.....	47
Boyd v. Hood, 57 Pa. 98.....	47, 122
Boyd v. U. S., 116 U. S. 617.....	112
Bradley v. Richmond, 227 U. S. 477.....	25
Braun v. Chicago, 110 Ill. 186.....	35
Ex rel. Brewing Co. v. Fromme, 35 App. Div. 459.....	66, 68
British India Co. v. Com'rs Int. Rev., 7 Q. B. D. 165.....	90
Brown v. Goodwin, 75 N. Y. 409.....	114
Brown v. Kinney, 128 Fed. Rep. 310.....	125
Brown v. Watts, 1 Taunt. 353.....	62
Browne v. Bennett, 24 La. Ann. 618.....	54
Browning v. Waycross, U. S. S. C. Oct. 1913.....	24
Bryan v. 1st Nat. Bk., 205 Pa. 7.....	56, 66
Buckalew v. U. S., 102 Fed. Rep. 320.....	102
Buckley v. Hamason, 50 Minn. 195.....	25
Buffington v. Day, 11 Wall. 113.....	66
Burrough v. Abel, 105 Fed. Rep. 366.....	118

C.

Cabbott v. Radford, 17 Minn. 320.....	56
Campau v. Lewis, 3 Wall. 106.....	47
Campbell v. U. S., 107 U. S. 407.....	xiv, 110
Campbell v. Wilcox, 10 Wall. 421.....	62
Cardell v. Bridge, 9 Allen, 355.....	98
Cardinal v. Smith, Deady, 197.....	xiv, 78
Cargill Co. v. Minn., 180 U. S. 452.....	23
Carpenter v. Johnson, 1 Nev. 331.....	65

TABLE OF CASES.

145

(References are to Pages.)

Carroll v. Mayor, 12 Ala. 173.....	24
Cassidy v. St. Germain, 22 R. I. 53.....	66
Cedar Rapids Co. v. Stewart, 25 Iowa, 115.....	54
Celley v. Gray, 37 Vt. 136.....	122
Cent. Trust v. C. H. V. & T., 92 Fed. Rep. 919.....	100
Central Trust v. Treat, 171 Fed. Rep. 301, 185 id. 760.....	28
In re Chadwick, 1 Lowell, 439.....	28, 112
Chartiers Co. v. McNamara, 72 Pa. 278.....	65
Cheatham v. U. S., 92 U. S. 85.....	118
Chervet v. Jones, 6 Mad. 267.....	56
Cheseborough v. U. S., 192 U. S. 253.....	117, 119, 127
Chic. Wil. & St. P. v. U. S., 127 U. S. 406.....	120
Christie-Street Co. v. U. S., 129 Fed. Rep. 506.....	xiv, 115, 118
Citizens' Teleph. v. Fuller, 229 U. S. 322.....	25
Ex parte City, re Knox, 64 Ala. 463.....	24
City of Topeka v. Jones, 74 Kan. 164.....	95
Clark v. Bailey, 12 Blatchf. 156, 21 Wall. 284.....	28
Clark v. Gilbert, 5 Blatchf. 330.....	30
Clemens v. Conrad, 19 Mich. 170.....	66
Cliquot's Champagne, 3 Wall. 114.....	120
Ex rel. Cohn v. Miller, 180 N. Y. 16.....	90
Collins v. N. H., 171 U. S. 30.....	xxv
Com'rs Louisville v. Buckner, 48 Fed. Rep. 533.....	118
Commonwealth v. Cusick, 120 Mass. 183.....	121
Commonwealth v. Holbrook, 10 Allen, 200.....	24
Commonwealth v. Sloan, 4 Cush. 52.....	116
Cook v. Marshall County, 196 U. S. 261.....	23
Cooke v. England, 27 Md. 14.....	66
Coopersville Co. v. Lemon, 163 Fed. Rep. 145.....	xxv, 116
Coppernoll v. Ketcham, 56 Barb. 111.....	63
Coppock v. Bower, 4 M. & W. 36.....	56
Corbin v. Tracy, 34 Conn. 325.....	65
Cornell v. Coyne, 192 U. S. 418.....	xxv
Corporation Tax Cases, 200 U. S. 107.....	xxvi
Corrie v. Billin, 23 La. Ann. 250.....	61
Craft v. Schafer, 153 Fed. Rep. 175.....	119
Crawford v. Hubbell, 89 Fed. Rep. 961, 177 U. S. 419.....	94
Crocker v. Foley, 13 Allen, 376.....	47
Cuzner v. Calif. Club, 155 Cal. 303.....	45

(References are to Pages.)

D.

Davis v. Daugherty, 105 Fed. Rep. 769.....	3
Davis v. Richardson, 45 Miss. 499.....	66
Davis v. Williams, 13 East. 232.....	47
Day v. Barker, 36 Mo. 125.....	65
De Bary v. Dunne, 172 Fed. Rep. 940.....	26, 32, 120
De Bary v. Souer, 101 Fed. Rep. 425.....	23
Delorme v. Ferk, 24 Wis. 201.....	70, 101
Desmond v. Norris, 10 Allen, 250.....	54
Dinsmore v. South. Exp., 92 Fed. Rep. 714; 102 id. 794; 183 U. S. 115.	94
Doe v. Amos, 2 M. & R. 180.	122, 123
Doffin v. Guyer, 39 Ind. 215.....	54
Doll v. Evans, 15 Int. R. R. 143.....	114
Dollar Sav. Bk. v. U. S., 19 Wall. 227.....	28, 121
Dorris v. Grace, 24 Ark. 326.....	65
Dougherty v. U. S. 181 U. S. 622.....	123
Dowell v. Applegate, 7 Fed. Rep. 881.....	54
Downes v. Bidwell, 182 U. S. 244.....	125

E.

Eagle v. Nowlin, 94 Fed. Rep. 646.....	116
Easterbrook v. Heb. L. Orph. Soc., 85 Conn. 289.....	45
Eidman v. Martinez, 184 U. S. 578.....	xxvi, 120
Eidman v. Tilghman, 136 Fed. Rep. 141.....	125
Eldredge v. Ward, 155 Fed. Rep. 253, 174 id. 402.....	91
Eliot v. Freeman, 220 U. S. 178, 55 L. Ed. 424.....	xxvi
Ellis v. State, 5 Ga. App. 615.....	45
Emery v. Hobson, 63 Me. 33.....	63

F.

Fairbank v. U. S., 181 U. S. 283.....	xiii, 95, 118, 121
Farmers' L. & T. v. Council Bluffs Co., 90 Fed. Rep. 806.....	100
Farmers' L. & T. v. Treat, 171 Fed. Rep. 302, 185 id. 760.....	28
Felton v. U. S., 96 U. S. 699.....	116

TABLE OF CASES.

147

(References are to Pages.)

Fish v. Cottenet, 44 N. Y. 538.....	62
Fisher v. Leslie, 1 Esp. 426.....	93
Flaherty v. Hanson, 215 U. S. 515.....	25
Fleshman v. McClain, 105 Fed. Rep. 610, 106 id. 880....	91, 99, 115
Flint v. Stone Tracy Co., 220 U. S. 107.....	46, xxvi, 123
Foster v. Holley's Admin., 49 Ala. 593.....	54
14 Diamond Rings v. U. S., 183 U. S. 176.....	127
Freeman v. U. S., 157 Fed. Rep, 195.....	119
Frink v. Thompson, 4 Lansing, 489.....	63

G.

Garland v. Lane, 46 N. H. 245.....	56
Germ. Sav. Bk. v. Archbold, 15 Blatch. 398.....	77, 114
Govern v. Littlefield, 13 Allen, 127.....	63
In re Grace, 75 Fed. Rep. 2.....	109
Grace v. Collector, 79 Fed. Rep. 315.....	109
Granby Mercantile Co. v. Webster, 98 Fed. Rep. 604.....	48
Grand v. Cox, 24 La. Ann. 462.....	62
Gray v. W. U. T. Co., 85 Mo. App. 123.....	95
Green v. Holway, 101 Mass. 243.....	62, 66
Green v. Lowry, 38 Ga. 548.....	56
Gregory v. Fraser, 3 Camp. 454.....	56
Gundling v. Chicago, 177 U. S. 183.....	25
Gunter v. Lecky, 30 Ala. 591.....	24
Gurr v. Scudds, 11 Exch. R. (H. & G.) 190.....	122, 123

H.

Haight & F. v. McCoach, 135 Fed. Rep. 894.....	119
Hall v. Bishop, 3 Daly, 109.....	25
Hall v. Jordan, 19 Wall. 271.....	100
Halock v. Jaudin, 34 Cal. 167.....	56, 63
Hammond Packing Co. v. Montana, 233 U. S. 331.....	xxiv
Harper v. Clark, 17 Ohio St. 190.....	63
Hartranft v. Wiegmann, 121 U. S. 609.....	122, 123
Hatch v. Reardon, 110 App. Div. 821; 184 N. Y. 431; 204 U. S. 152	90

(References are to Pages.)

Haymes v. Brown, 132 Fed. Rep. 525.....	115
Head Money Cases, 112 U. S. 580.....	xxvii
Herold v. Kahn, 159 Fed. Rep. 608.....	117
Herrick v. Malin, 22 Wend. 388.....	47
Hertz v. Woodman, 218 U. S. 205.....	xxvi, 125
High v. Coyne, 93 Fed. Rep. 450; 178 U. S. 111.....	xxvi
Hirsh v. Commonwealth, 21 Gratt. 785.....	xiv
Hitchcock v. Sawyer, 39 Vt. 412.....	63
Holman v. Johnson, 1 Cowper, 341.....	47
Holt v. Green, 73 Pa. 200.....	25
Holyoke Co. v. Franklin Co., 97 Mass. 150.....	63
Hooper v. Calif., 155 U. S. 648.....	23
Hoops v. Atkins, 41 Ga. 109.....	93
Hoppock v. Plato, 30 How. Pr. 120.....	68
Howe v. Carpenter, 53 Barb. 382.....	63
Hugus v. Strickler, 19 Iowa, 413.....	121, 122
In re Huttman, 70 Fed. Rep. 699.....	xiv

I.

Income Tax Cases, 157 U. S. 429; 158 id. 601....	xxvi, xxviii, 123
--	-------------------

J.

Jackson v. Hough, 38 W. Va. 237.....	30, 33
Jacquin v. Warren, 90 Ill. 459.....	62, 93
James v. Appel, 192 U. S. 129.....	121
James v. Blauvelt, Fed. Cas. 7180.....	101
James v. Catherwood, 3 Dowling & R. 190.....	47
James v. Hicks, 110 U. S. 272.....	117
Johnson v. Herold, 161 Fed. Rep. 593.....	117
Jones v. Jones, 38 Cal. 584.....	93
Jordan v. Roche, 228 U. S. 436.....	125

K.

Kaufman v. U. S., 113 Fed. Rep. 919.....	53
Kawailani, The, 128 Fed. Rep. 879.....	127

TABLE OF CASES.

149

(References are to Pages.)

Kershaw v. Cox, 3 Esp. N. P. C. 246.....	47
Kings Co. Sav. Inst. v. Blair, 116 U. S. 200.....	118
In re Kinney, 102 Fed. Rep. 463.....	28, 112
Kirk v. W. U. T. Co., 90 Fed. Rep. 809.....	95
Klock Produce Co. v. Hartson, 212 Fed. Rep. 758.....	118
Knill v. Williams, 10 East. 431.....	47
Knowlton v. Moore, 178 U. S. 41.....	xxvi
Re Knox, ex parte City, 64 Ala. 463.....	24
Knox v. Rossi, 25 Nev. 96.....	66
Knox v. Hindepoper, 21 Wis. 527.....	65
In re Kollock, 165 U. S. 526.....	xiv
Kreiss v. Seligman, 8 Barb. 439.....	115

L.

Laird v. State, 61 Md. 309.....	93
In re Lamberton, 124 Fed. Rep. 446.....	xiv
Landram v. U. S., 16 Ct. Cls. 74.....	28
Land Title & T. v. McCoach, 127 Fed. Rep. 386.....	125
Larned v. Andrews, 106 Mass. 435.....	25
Latham v. Smith, 45 Ill. 29.....	66
Lawrence v. Seyburn, 202 Fed. Rep. 913.....	xxv
Leather Mfrs. Bk. v. Treat, 116 Fed. Rep. 774; 128 id. 262..	28
Ledbetter v. U. S., 170 U. S. 610.....	26
Lees v. U. S., 150 U. S. 476.....	114
Lewis v. Campau, 3 Wall. 106.....	101
License Tax Cases, 5 Wall. 462.....	23, 24, 123
Linton v. Natl. L. I. Co., 104 Fed. Rep. 584.....	104
In re Lippmann, 3 Ben. 95.....	28, 29
Ludlow v. Van Rensselaer, 1 Johns. R. 96.....	47

M.

McAfferty v. Hale, 24 Iowa, 355.....	61
McBride v. Doty, 23 Iowa, 122.....	62, 68
McClain v. Merchants, 112 Fed. Rep. 787; 115 id. 295.....	48
McClain v. Penna. etc., Co., 108 Fed. Rep. 618.....	xiii, 121
McCoach v. Minehill, etc., Co., 228 U. S. 295.....	46, xxvi

(References are to Pages.)

McCray v. U. S., 195 U. S. 27; 49 L. Ed. 78.....	xxlv
McCulloch v. Md., 4 Wheaton, 316.....	xxvii
In re McDonough, 49 Fed. Rep. 362.....	3
McGuire v. Commonwealth, 3 Wall. 387.....	24
McLearn v. Skelton, 18 La. Ann. 514.....	47
McNally v. Field, 119 Fed. Rep. 445.....	xiii, 70, 96, 97, 122
Mansfield v. Excelsior R. Co., 135 U. S. 326.....	113
Marks v. U. S., 196 Fed. Rep. 476.....	xiv, xxiv
Mastin v. Mastin, 99 Fed. Rep. 435.....	101
Mechanics' Bk. v. Townsend, 5 Blatchf. 315.....	27
Mercer v. Mercer, 29 Iowa, 557.....	47, 56, 101
In re Mdse. Imported, Holt, 75 Fed. Rep. 998.....	109, 121
Mchts' Nat. Bk. v. U. S., 42 Ct. Cls. 6.....	27
Mchts' Warehouse v. McClain, 112 Fed. Rep. 787.....	48
Merck v. Treat, 202 Fed. Rep. 133.....	118
Merritt v. Cameron, 137 U. S. 542.....	xlii
Metropol. Exch. v. Gill, 199 Fed. Rep. 545.....	91
Miller v. Peo., 52 N. Y. 304.....	93
Miner v. Fredonia, 27 N. Y. 155.....	26
Mobile, etc., R. Co. v. Edwards, 46 Ala. 267.....	61
Moore v. Moore, 47 N. Y. 467.....	61, 66, 101
Moore v. Quick, 105 Mass. 49.....	66
Morley v. Hall, 2 Dowl. 494.....	122
Morris v. McMorris, 44 Miss. 441.....	63
Moxley v. Hertz, 216 U. S. 344.....	xxiv
Munic. Tel., etc., Co. v. Ward, 133 Fed. Rep. 70.....	91
Mutheson & Co. v. U. S., 71 Fed. Rep. 394.....	122
Myers v. Smith, 48 Barb. 614.....	49, 54, 61, 66

N.

Nat. Bk. Commerce v. Allen, 211 Fed. Rep. 743.....	xxvi
Nave v. King, 27 Md. 356.....	70
Newhall v. Jordan, 149 Fed. Rep. 586; 160 id. 661.....	127
New Haven, etc., Co. v. Quintard, 31 How. Pr. N. Y. 29..	62,
	63, 66, 122
New Orleans v. Metropol. Loan, 31 La. Ann. 310.....	29, 34
N. Y. & Cuba Mail v. U. S., 125 Fed. Rep. 320; 200 U. S.	
488	95, 117

TABLE OF CASES.

151

(References are to Pages.)

N. Y. Teleph. Co. v. Treat, 130 Fed. Rep. 340.....	96, 122
Nicol v. Ames, 89 Fed. Rep. 144; 173 U. S. 509.....	91, 123
Noble v. Citizens Bk., 63 Neb. 847.....	70, 98
Northrup v. Shook, 10 Blatchf. 243.....	33

O.

Ohio Tax Cases, 232 U. S. 576.....	25
Ohio v. Kendle, 8 O. N. P. N. S. 109.....	24
Oregon, etc., Trust v. Rathbun, 5 Sawyer, 32.....	28
Orford v. Cole, 2 Starkie, 351.....	47
Oulton v. Sav. Inst., 17 Wall. 118.....	27
Owen v. Thomas, 3 Mylne & K. 353.....	56, 63
Oxford Iron Co. v. Spradley, 51 Ala. 171.....	63

P.

Pacif Ins. Co. v. Soule, 7 Wall. 433.....	123
Park & Tilford v. U. S., 66 Fed. Rep. 731.....	109
Patterson v. Eames, 54 Me. 203.....	65
Patterson v. Gile, 1 Col. T. 200.....	54
Patton v. Brady, 184 U. S. 608.....	3, 43, 123, 124
Peck v. Kinney, 128 Fed. Rep. 313.....	125
Penn. Co. for Ins. v. McClain, 105 Fed. Rep. 367, 106 id. 618..	118
Penna. Steel v. N. Y. City. Ry., 198 Fed. Rep. 774.....	xxvi
Peo. v. Fromme, 35 App. Div. N. Y. 459.....	66, 68
Peo. ex rel. Cohn v. Miller, 180 N. Y. 16.....	90
Pepke v. U. S., 183 U. S. 176.....	127
Pervear v. Commonwealth, 5 Wall. 475.....	24
Phila. Trust v. McCoach, 127 Fed. Rep. 126.....	125
Pierpont v. Johnson, 104 Ill. App. 27.....	66
Pilcher v. U. S., 113 Fed. Rep. 248.....	75
Plessinger v. Dupuy, 25 Ind. 419.....	65.
Plumley v. Mass., 155 U. S. 461.....	24
Pollard v. Phoenix Ins. Co., 63 Miss. 244.....	25
Pollock v. Farmers' L. & T., 157 U. S. 429, 158 id. 601.....	xxvi
	xxviii, 123
Ponce v. R. C. Church, 210 U. S. 296.....	127

(References are to Pages.)

Portland v. O'Neill, 1 Oreg. 218.....	24
Pounds v. U. S., 171 U. S. 35.....	75
Powell v. Penna., 127 U. S. 678.....	xxv
Powers v. Barney, 5 Blatch. 202.....	123
Prather v. Pritchard, 26 Ind. 65.....	70, 98
Prather v. Tulauf, 38 Ind. 155.....	56
Pugh v. McCormick, 14 Wall. 361.....	64, 93
Pullan v. Kinsinger, 2 Abb. U. S. 94.....	xiii

Q.

In re Quantity Spirits, 3 Ben. 552, Fed. Cas. 11495.....	116
--	-----

R.

Real Est. Bk. v. U. S., 16 Ct. Cls. 335.....	117
Ex parte Reed, 100 U. S. 13.....	xiv
Reed v. Deere, 7 Barn. & C. 261.....	47
Rees v. Jackson, 64 Pa. 486.....	54
Rex v. Hawkeswood, 1 Leach Cro. Ca. 257.....	63
Rex v. Preston, 3 N. & M. 31.....	64
Rice & Co. v. U. S., 53 Fed. Rep. 910.....	122
Richards v. Frankum, 9 Carr. & P. 221.....	93
Richmond v. Blake, 132 U. S. 592.....	27
Rippiner v. Wright, 2 B. & Ald. 479.....	62
Robards Tobacco Co. v. Franks, 103 Fed. Rep. 276, 112 id. 784.	xii, 123
Robertson v. U. S., 220 U. S. 616.....	xxvi
Robbins v. Shelby Co., 120 U. S. 489.....	36
Roche v. Jordan, 175 Fed. Rep. 234, 228 U. S. 436.....	125
Rowe v. Bowman, 183 Mass. 488.....	62
Ruckman v. Bergholz, 37 N. J. L. 437.....	25

S.

Sackett v. McCaffrey, 131 Fed. Rep. 219.....	66, 70, 98
St. Louis v. Laughlin, 49 Mo. 559.....	24
St. Paul, etc., Ry. Co. v. Phelps, 137 U. S. 528.....	xiii
Sarlls v. U. S., 152 U. S. 570.....	3

(References are to Pages.)

Sault Ste. Marie v. Internat. Transit, U. S. S. C. Oct. 1913....	24
Sayles v. Davis, 22 Wis. 225.....	70
Schell's Extrs v. Fauche, 138 U. S. 562.....	xiii
Schermerhorn v. Burgess, 55 Barb. 422.....	61
Schollenberger v. Pa., 171 U. S. 1.....	xxv
Selden v. Equitable Trust, 94 U. S. 419.....	27, 28
Sesnon v. U. S., 182 Fed. Rep. 573, 220 U. S. 609.....	23, 120
Shelley v. U. S., 198 Fed. Rep. 88.....	xxiv
Sheridan v. Allen, 153 Fed. Rep. 568.....	113
Sime v. Howard, 4 Nev. 473.....	101
Simmons v. State, 12 Mo. 268.....	24
Simpson v. Peaslee, 20 How. 571.....	127
Simpson v. Treat, 126 Fed. Rep. 1003.....	94, 99
Slack v. Tucker, 1 Holmes, 485, 23 Wall. 321.....	34, 39
Small v. Slocumb, 112 Ga. 279.....	66
Smith v. Mawhood, 14 M. & W. 452.....	25
Smith v. Waters, 25 Ind. 397.....	121
Smythe v. Fiske, 23 Wall. 374.....	xiii, 120, 123
Snyder v. Marks, 109 U. S. 189.....	xiii, 118
South Carolina v. U. S., 199 U. S. 437.....	71, 124
South. Exp. v. Rose Co., 124 Ga. 581	95
Southern Oil Co. v. Texas, 217 U. S. 114.....	23
Sperry v. Horr, 32 Iowa, 184.....	55
Spielman v. State. 27 Md. 520.....	26
Spooner v. Eifler, 1 Heisk. 633.....	66
Spreckles v. McClain, 109 Fed. Rep. 76, 113 id. 244.....	xiv, 113, 123
Springer v. U. S., 102 U. S. 586.....	xii, 123
Stanwood v. Green, 2 Abb. U. S. 184.....	29
State v. Delano, 54 Me. 501.....	24
State v. Duncan, 16 Lea, 75.....	33
State v. Field, 49 Mo. 270.....	35
State v. Garton, 32 Ind. 1.....	70
State v. Hill, 30 Wis. 416.....	63, 93
State v. Johnson, 65 Me. 362.....	24
State v. Mott, 16 Minn. 472.....	93
State R. R. Tax Cases, 92 U. S. 575.....	xii
Steele v. Spencer, 1 Peters, 552.....	47
Stirneman v. Smith, 100 Fed. Rep. 600.....	70, 98
Stockdale v. Doswell, 16 Wall. 156.....	35
Stockdale v. Insur. Cos., 20 Wall. 323.....	125

(References are to Pages.)

In re Strouse, 1 Sawyer, 605.....	29
Sulpho Bath Co. v. Allen, 66 Neb. 295.....	66
Swift Co. v. U. S., 111 U. S. 22.....	118

T.

Taylor v. Duncan, 33 Tex. 440.....	54
Taylor v. U. S., 3 How. U. S. 197.....	120
Teagarden v. Garver, 24 Ind. 399.....	49
Tedrick v. Hiner, 16 Ill. 189.....	25
The Kawaiiani, 128 Fed. Rep. 879.....	127
Thomas v. Texas, 40 Tex. Crim. App. 279.....	47, 66, 93
Thomas v. U. S., 192 U. S. 363, 115 Fed. Rep. 207.....	90, 123
Tobey v. Chipman, 95 Mass. 123.....	56, 65
Tolman v. Treat, 106 Fed. Rep. 679, 113 id. 892.....	104
Tomlin v. Woods, 125 Iowa, 367.....	66
Topeka v. Jones, 74 Kan. 164.....	95
Treat v. Tolman, 106 Fed. Rep. 679, 113 id. 892.....	104
Tripp v. Bishop, 56 Pa. 424.....	56
Trull v. Moulton, 12 Allen, 396.....	56

U.

Union, etc., Assn. v. Neill, 31 Iowa, 95.....	54
U. S. v. Abbott, 9 Int. R. R. 186.....	72
U. S. v. Adams Exp., 119 Fed. Rep. 240.....	26
U. S. v. Allen, 14 Fed. Rep. 263.....	114
U. S. v. American Tobacco, 166 U. S. 468.....	119
U. S. v. Bank of Montreal, 21 Fed. Rep. 236.....	27
U. S. v. Barnes, 222 U. S. 513.....	121
U. S. v. Bedgood, 49 Fed. Rep. 54.....	113
U. S. v. Black, 11 Blatchf. U. S. 543, 128 U. S. 40.....	xlii
U. S. v. Breed, 24 Fed. Cas. 1222, No. 14638.....	120
U. S. v. Brown, 119 Fed. Rep. 482.....	53, 54
U. S. v. Brown, Deady, 566.....	109
U. S. v. Buzzo, 18 Wall. 125.....	63, 116
U. S. v. Chamberlain, 219 U. S. 250.....	60, 111, 115
U. S. v. Chevallier, 102 Fed. Rep. 107 id. 434.....	26, 32
U. S. v. Chouteau, 102 U. S. 603.....	114
U. S. v. Clawson 119 Fed. Rep. 994.....	91

TABLE OF CASES.

155

(References are to Pages.)

U. S. v. Cole, 134 Fed. Rep. 697.....	xiii, 115, 120
U. S. v. Craft, 43 Fed. Rep. 374.....	114
U. S. v. Cutting, 3 Wall. 441.....	30
U. S. v. Davis, 37 Fed. Rep. 468.....	26
U. S. v. Devlin, 6 Blatchf. 71.....	115
U. S. v. Don Kee, 192 Fed. Rep. 733.....	xxiv
U. S. v. Eaton, 144 U. S. 677.....	xiv, 115
U. S. v. Edwards, 43 Fed. Rep. 67.....	113
U. S. v. 11150 Lbs. Butter, 188 Fed. Rep. 157, 195 id. 657..	xxv, 116
U. S. v. Farmers' L. & T., 25 Fed. Cas. No. 15070.....	27
U. S. v. Fidelity Trust, 222 U. S. 158.....	118
U. S. v. Fisk, 3 Wall. 445.....	31
U. S. v. Foster, 2 Biss. 453.....	114
U. S. v. Gallant, 117 Fed. Rep. 281.....	116
U. S. v. Glab, 99 U. S. 225.....	26
U. S. v. Goldback, 102 U. S. 623.....	57, 79
U. S. v. Gooding, 12 Wheat. 460.....	122
U. S. v. Griswold, 7 Saw. 311.....	100
U. S. v. Halberstadt, Gilp. 262, Fed. Cas. 15276.....	117
U. S. v. Hall, 131 U. S. 50.....	113
U. S. v. Hardison, 135 Fed. Rep. 419.....	113
U. S. v. Hill, 120 U. S. 169.....	xiii
U. S. v. Hodson, 10 Wall. 395.....	120, 122
U. S. v. Howard, 1 Sawyer, 507.....	38
U. S. v. Hyams, 146 Fed. Rep. 15; 139 id. 997.....	110
U. S. v. Isham, 17 Wall. 496.....	48, 122, 123
U. S. v. Jackson, 1 Hughes, 531.....	26
U. S. v. Kaufman, 96 U. S. 567.....	26
U. S. v. Kenton, 2 Bond, 87.....	35
U. S. v. Keyes, 10 Fed. Rep. 876.....	48
U. S. v. Lamson, 165 Fed. Rep. 80.....	113
U. S. v. Liquor Dealers, 156 Fed. Rep. 219.....	116
U. S. v. McGuinniss, 1 Abb. U. S. 120.....	117
U. S. v. Montjoy, 3 Int. Rev. R., Fed. Cas. 15678.....	117
U. S. v. Moore, 11 Fed. Rep. 248.....	72
U. S. v. Morin, 4 Biss. 93.....	114
U. S. v. Mullins, 119 Fed. Rep. 334.....	122
U. S. v. Neustaedter, 149 Fed. Rep. 1010.....	xxvi
U. S. v. N. Y. & Cuba Mail, 200 U. S. 488; 125 Fed. Rep. 320; 50 L. Ed. 569.....	95, 117

(References are to Pages.)

U. S. v. Olney, 1 Abb. U. S. 275.....	122
U. S. v. One Black Horse, 129 Fed. Rep. 167.....	114
U. S. v. Owens, 100 Fed. Rep. 70.....	70, 97
U. S. v. Pounds, 171 U. S. 35.....	75
U. S. v. Priest, 210 Fed. Rep. 332.....	118
U. S. v. Reisinger, 128 U. S. 398.....	125
U. S. v. Rennecke, 28 Fed. Rep. 847.....	26, 45
U. S. v. Riley, 5 Blatchf. 204.....	24
U. S. v. Rogers, 164 Fed. Rep. 520.....	116
U. S. v. Sav. Bk., 104 U. S. 728.....	xiii, 117, 118
U. S. v. 7 Bbls. Whisky, 131 Fed. Rep. 806.....	115
U. S. v. Simons, 1 Abb. 470.....	35
U. S. v. 3 Stills, 47 Fed. Rep. 495.....	75
U. S. v. Stowell, 133 U. S. 1.....	120
U. S. v. Symonds, 120 U. S. 46.....	xiv
U. S. v. Sykes, 58 Fed. Rep. 1000.....	48, 114
U. S. v. Thomas, 115 Fed. Rep. 207; 192 U. S. 363.....	45, 90
U. S. v. Thomasson, 4 Biss. 99.....	116
U. S. v. 20 Boxes, 123 Fed. Rep. 135; 133 id. 910.....	122
U. S. v. Two Barrels Whisky, 96 Fed. Rep. 479.....	114
U. S. v. 200 Barrels, 95 U. S. 571.....	xiv
U. S. v. 246½ Lbs. Tobacco, 103 Fed. Rep. 791.....	120
U. S. v. 237 Boxes, 6 Ben. 543.....	75
U. S. v. Union Pacif., 91 U. S. 72.....	122
U. S. v. Van Slyke, 8 Biss. 227.....	36
U. S. v. Vinson, 8 Fed. Rep. 507.....	44
U. S. v. Walsh, 1 Abb. U. S. 66.....	72
U. S. v. Wong Kim Ark, 18 Sup Ct. Rep. 456.....	121

V.

Vail v. Knapp, 49 Barb. 299.....	68, 122
Van Deman v. Lewis Co., 214 Fed. Rep. 827.....	25
Vanderbilt v. Eidman, 196 U. S. 480.....	xxvi, 118
Vanderbilt Univ. v. Cheney, 116 Tenn. 259.....	45
Vaughan v. O'Brien, 39 How. Pr. 515.....	55, 63

TABLE OF CASES.

157

(References are to Pages.)

Veazie Bk. v. Fenno, 8 Wall. 533.....	xxvii
Vermont v. U. S., 217 U. S. 605; 54 L. Ed. 899.....	xxiv
Vorebeck v. Roe, 50 Barb. 302.....	63

W.

Wallace v. Craven, 34 Ind. 534.....	66
Waring v. Smyth, 2 Barb. Ch. 119.....	47
Warren v. Shook, 91 U. S. 704.....	27, 30, 32
Warrington v. Furbor, 8 East. 242.....	122
Warwick v. Bettman, 102 Fed. Rep. 127; 108 id. 46.....	70, 97
Waterbury v. McMillan, 46 Miss. 635.....	56
Wellard v. Moss, 1 Bing. 134.....	93
Weltner v. Riggs, 3 W. Va. 445.....	63
Western Exp. Co. v. U. S., 141 Fed. Rep. 28.....	26
Western U. T. v. Winnsboro, 71 S. C. 231.....	xiii
Weyman v. Torreyson, 4 Nev. 124.....	56, 62
Wheaton v. Weston, 128 Fed. Rep. 151.....	xiii
White v. Treat, 181 U. S. 264; 45 L. Ed. 853.....	91
Whitehill v. Shickle, 43 Mo. 537.....	63
Wigham v. Pickett, 43 Ala. 140.....	61
Wilkes-Barre Co. v. Davis, 214 Fed. Rep. 511.....	xxvi, 46
Willey v. Robinson, 13 Allen, 128.....	47
Williams v. Talladega, 226 U. S. 404.....	25
Wilson v. Carey, 40 Vt. 179.....	62
Wilson v. Kennedy, 1 Esp. 245.....	62
Wiltse v. State, 8 Heisk. 544.....	35
Wingert v. Zeigler, 91 Md. 318.....	62
Woodward v. Stearns, 10 Abb. Pr. N. S. 395.....	25
Works v. Hershey, 35 Iowa, 340.....	63
Wright v. Mich. Cent., 130 Fed. Rep. 843.....	94

Z.

Zonne v. Minn. Syndicate, 220 U. S. 187.....	46
--	----

CONDENSED CATCH LINE INDEX.

FOR INDEX SEE PAGE 167.

CONDENSED CATCH LINE INDEX TO THE ACT.

For Index, see Page 167.

(References are to Pages.)

Act of Oct. 22, 1914, see also separate titles.

Adhesive stamps, § 5.....	46
Beer, etc., § 1.....	1
notes.	2
Beer tax, former to revive Jan. 1, 1916, § 24.....	124
Bonds, debentures, stocks.	80
notes on.	89
Bond, of indemnity, and others.....	85
notes on.	96
Broker's note, or memo. of sale.....	86
notes on.	99
Cancellation of stamps, § 8.	53
Certificates, all required.	86
notes on.	98
Certificates, marine, etc.	86
notes on.	98
Certificates of profits, etc.	85
notes on.	97
Chewing gum, etc.	107
notes on.	110
Contract broker's note.	86
notes on.	99
Conveyance, deed, etc.	86
notes on.	100

162 CONDENSED CATCH LINE INDEX TO THE ACT.

(References are to Pages.)

Custom-house entry, for consumption, etc.....	86
Custom-house entry, withdrawal from bond.....	87
Distribution of stamps, officially, § 10.....	56
Express and freight.	83
notes on.	93
Exportation of taxable mdse. § 19.....	74
Failure to stamp papers, penalty, § 6.....	49, 58
Forgery and counterfeiting of stamps, § 7.....	50
Governmental papers exempt, § 15.....	69
Imported articles taxed, § 21.....	77
Insurance, all, except certain.....	87
notes on.	102
Insurance, certain exempted.	87
notes on.	102
Kind of stamp not essential, § 14.....	68
Merchandise stamps, omission of, § 17.....	71
Monthly declaration by manufacturer of mdse. § 20.....	75
Occupation taxes, §§ 3, 4.....	18, 39
notes.	22, 43
Other laws made applicable, § 23.....	110
notes on collection.	111
construction.	119
penalties.	114
protest and recovery.	117
Parlor car or sleeper ticket.	89
notes on.	105
Passage tickets, foreign.	88
notes on.	103
Perfumery and cosmetics.	106
notes on.	108
Perfumery, cosmetics, etc., stamping, § 17.....	71
Post-stamping of papers, § 11.....	58
Power of attorney.	88
notes on.	104
Promissory notes.	83
notes on.	92
Promissory note, unstamped, § 9.	55

CONDENSED CATCH LINE INDEX TO THE ACT. 163

(References are to Pages.)

Protest of note or bill.	89
notes on.	104
Proxy, voting.	88
Recording forbidden until stamped, § 12.....	64
Recording or registry unlawful, unstamped, § 13.....	67
Removal, misuse of mdse. stamps, § 18.....	73
Removal of unstamped mdse. § 19.	74
Sales of products on exchange.	81
notes on.	91
Sale of stamps, § 10.	57
Schedule A, documentary stamps, § 22.....	80
notes on.	89
Schedule B, merchandise tax.	106
Special taxes, general, § 3.....	18
notes	22
Special taxes, tobacco dealers and manufacturers, § 4..	39
notes	43
Stamp laws same for Schedules A and B, § 16.....	71
Stamp taxes imposed, § 5.....	46
Stamps, cancellation of, § 22.....	78
Stamps, preparation, etc., § 22.....	78
Stamps, sale, discount, § 22.....	79
Stamps, unused, redemption of, § 24.....	124
State and local functions exempt, § 15.....	69
Take effect, when Act to, § 24.....	124
Telegraph and telephone	84
notes on	95
Tickets, foreign passage	88
notes on	103
Tobacco, special taxes, § 4.....	39
notes	43
Validity not affected by wrong stamp, § 14.....	68
Wines, etc., § 2.....	4-16
notes	16

INDEX.

INDEX.

(References are to Pages.)

A.

Abatement. See Drawback.	
Absence of stamps from wines, effect of.....	6
Adhesive stamps	46
See Stamps.	
Administrative rulings, value of.....xi, xii, xiii, xiv, 78, 121	
where found	xi, xii
Agent. See Broker.	
Agriculture department and wine fortification.....	9
Ale. See Beer.	
Amendments of laws, R. S. § 3339.....	2, 6 et seq.
Oct. 1, 1890	7
June 7, 1906	14
Appropriation for enforcing Act.....	111
Armory. See Theatre.	
Assessment and collection	xxiii, 111

B.

Baggage, not taxed	94
Bank circulation	xxvii
Bankers, special tax on	18
how computed	18
banker, defined	18
postal and savings excepted.....	18
banker not taxed as broker.....	19
notes	27
Beer tax, former to revive Jan. 1, 1916.....	124, 125

(References are to Pages.)

Beer, etc., increased tax on.....	1,	2
notes on	2,	3
Berth in sleeping car, Schedule A.....		89
Bill of lading, required and taxed.....	83,	93
Billiard rooms, proprietor, special tax.....		21
notes		38
Billiards. See Bowling.		
Blending of wines		15
Board of trade, sales on.....	81,	91
actual deliveries not taxed, Schedule A.....		82
Bond of fortified wine producer.....	9, 11,	14
Bonds, debentures, issue of, taxed, Schedule A.....	80,	89
Bonds, corporate, Schedule A.....		80
Bonds, indemnity and others, tax on.....	85,	96
Schedule A		85
Bond of any description, Schedule A.....		85
Bowling alleys, proprietors, special tax.....		21
definition of bowling and billiard rooms.....		21
notes		38
Brewers		xxiv
Broker. See the various kinds.		
special tax on		19
defined		19
broker's tax not required of banker.....		19
Broker's note, or memo. of sale.....	86,	99
Schedule A		86
Broker, stock, special tax.....		19
notes		30
Butter, adulterated and renovated.	xxiv,	xxv

C.

Canal Zone		26
Cancellation of stamps	53, 54,	78
Cards, playing		xxvi
Certificates, of any required kind.....	86,	98
Schedule A		86
Certificates of damage, etc.....	86,	98
Schedule A		86

(References are to Pages.)

Certificate of indebtedness, corporate, Schedule A.....	80
Certificate, marine or port.....	86, 98
Schedule A	86
Certificates of profit, etc.....	85, 97
Schedule A	85
Champagne. See Wines.	
tax on	4
Cheese, filled	xxv
Chewing gum, etc., Schedule B.....	107, 110
Cigars	xxiv
Cigar manufacturer, special tax.....	41
notes	43
Cigarette manufacturer, special tax.....	42
notes	43
Circulars. See Administrative Rulings.	
Circulation, bank	xxvii
Circus, proprietor of, special tax.....	20
defined	20
taxed in every state visited.....	20
notes	37
Cognac. See Wine Spirits.	
Collateral, stocks as, not taxed.....	80
Collection of taxes	111
Commercial broker, special tax.....	19
defined	19
not taxed as commission merchant.....	19
notes	34
Commission merchant, special tax.....	21
defined	21
commission merchant and commission broker one tax..	21
co-operative house exempt	21
notes	38
Commissioner, rulings of. See Administrative.	
Constitutionality (see notes each section).....	123
Construction of laws	119
Contract note. See Broker's note of sale.	
Schedule A	86
Conveyance, tax on	86, 100
Schedule A	86

(References are to Pages.)

Co-operative B. & L. securities exempt.....	69
Cordials. See Liqueurs; Wines.	
tax on	4
Corporation excise tax	xxvi
Cosmetics and perfumery, Schedule B.....	106, 108
Cosmetics, etc., failure to stamp.....	71
Cosmetics, etc., monthly declaration.....	75
Cosmetics, etc., removal of stamps.....	73
Cosmetics, etc., removal of, unstamped.....	74
Cosmetics. See Merchandise; Perfumery.	
Counterfeiting and forgery of stamps.....	50, 52
Custom-house broker, special tax.....	19
defined	19
notes	36
Custom-house, entry, for consumption, Schedule A.....	86
withdrawal from bond	87

D.

Debt, instruments securing, exempt, Schedule A.....	86
Deed, tax on	86, 100
Schedule A	86
Default of stamps. See Omission.	
Dentifrices, Schedule B	106
Department rulings. See Administrative.	
Discount on stamps sold.....	79
Distilled spirits	xxiv
Documentary stamp taxes	80
Drawback on exports	107, 110
on wine exported	12
abatement on recovered spirits.....	13
exemption of exported cosmetics, etc.....	74
on exported perfumery, etc.....	107
Dutch origin of excise taxes.....	ix

(References are to Pages.)

E.

Effect, Act to take.....	124
Emergency taxes, use of.....	vii
may be extended on expiration.....	xi, 125
Encumbrances, not included in deed tax, Schedule A.....	86
Enforcement of tax laws.....	111
Entertainment. See Exhibition.	
Entry, custom-house, for consumption, Schedule A.....	86
withdrawal from bond	87
bonded warehouse, Schedule A.....	87
Estoppel, none based on rulings.....	xiv, 115
Exchange, produce, sales on.....	81, 91
Excise, opposition to, reasons for.....	vii
Exempt, actual deliveries of mdse.....	82, 91
agricultural fairs, etc.	21
collateral stocks.	80
insurance, certain kinds.	87, 88, 102
government instruments.	69
lyceum lectures, etc.	21
mutual associations.	69
newspapers within county.	84, 94
telegraph and telephone service, certain.....	85
tickets, foreign passage certain.....	88, 104
Exhibition proprietor or agent, special tax.....	21
taxed in every state.	21
certain exemptions.	21
notes.	37
Exportation of taxable mdse.	74
Exports, drawback on certain.	107, 110
Express and freight tax on.....	83, 93
Schedule A.	83

F.

Factor. See Commercial Broker; see Commission Merchant.
 Failure to Stamp. See Omission.
 Fairs. See Exhibitions.

(References are to Pages.)

Fermented liquors.	xxiv, 1,	3
See Beer.		
Flour, mixed.		xxv
Foreign securities taxed.		65.
Forfeiture. See Collection; Penalties.		
of unstamped wines, etc.		6
Fortification of sweet wines.		6
notes on.		16
for exportation.		11
for making cordials, liqueurs, etc.		15
Fortified Wines. See Wines, etc.		
Freight and express, tax on.	83,	93
Schedule A.		83

G.

Governmental instrumentalities exempt.	69
Government securities, etc., exempt.	69.
Grape brandy. See Wine Spirits.	
tax increased.	6, 12, 13.
defined.	7

H.

Hair preparations, Schedule B.	106
Hall. See Theatre.	
Hawaii.	xxviii, 127
Holland, origin of stamp laws in.	x

I.

Imported articles pay duty and tax.	77
Income tax.	xxvii
Indemnity bonds, tax on.	85, 96.
Indictment. See Collection; Penalties.	
Intent to evade law.	58, 62
Inheritance Tax. See Legacy.	

(References are to Pages.)

Injunction against tax, impossible.	xii, xiii
Insular possessions.	xxviii, 126
Insurance, all kinds, except.	87, 102
kinds exempted.	87, 102
marine, inland, fire, fidelity, guaranty, liability, glass, boller, burglary, elevator, sprinkler, rents, profits, bond, title, credits, Schedule A.	87
certain forms exempted, life, accident, health, workmen's and co-operative fire, Schedule A.	87
Internal Revenue Laws.	xv, xxi, xxiii
classification of.	xxii
construction of.	xxii, 119
general, other than war tax.	xxi
miscellaneous.	xxviii
war tax of 1898, cf. each section.	
Internal Revenue System of U. S.	xxi, xxiii
War Revenue Act, relation to.	x, xxi
table of statutes, 1791-1913.	xv

L.

Leases, not taxed.	101
Legacy tax.	xxv, 118
License taxes, origin of.	22
License Tax. See Special Tax.	
Liens, not included in deed tax, Schedule A.	86
Litigation, amount of on tax questions.	iii, xii
Liqueurs. See Wines.	
tax on.	4
from fortified wines.	15
Local government securities exempt.	69
Lyceums. See Exhibitions.	

M.

Manufacturer of cigars, special tax.	41
notes.	43
Manufacturer of cigarettes, special tax.	42

(References are to Pages.)

Manufacturer of perfumery, etc.	71, 75
to make monthly declaration.	75
Manufacturer of tobacco, special tax.	40
notes.	43
single tax on maker various kinds.....	42
Marine certificates.	86, 98
Merchandise, exportation of taxable.	74
Merchandise imported, taxable.	77
Merchandise, removal of unstamped.	74
Merchandise, sales of on exchange.....	81, 91
Merchandise stamps, omission of	71
Merchandise stamps, removal of	73
Merchandise taxed.	106, 108
Merchant. See Commission Merchant.	
Mortgage lien, not included in deed tax, Schedule A.....	86
Mortgages, not taxed.	68, 86
Schedule A.	86
Municipal securities exempt.	69
Museum. See Theatre.	
Mutual associations, certain exempt.	69

N.

Newspapers, shipments of.	83, 93
Notes, promissory, tax on.	83, 92
Schedule A.	83

O.

Occupation tax. See Special Tax.	
Oleomargarine.	xxiv
Omission of mdsé. stamps.	71
Omission of stamp, effect on paper.....	58, 60, 64
Omission of documentary stamp, penalty.....	49
Omission of stamp, correcting	58, 60
Opium.	xxiv
Palace or parlor car seat, Schedule A.....	89

(References are to Pages.)

P.

Panama canal zone.	26
Parlor car ticket.	89, 105
Partnership.	26, 33, 116
Passage tickets foreign.	88, 103
Pawnbroker, special tax.	19
defined.	19
notes.	33
Penalties generally.	114
See separate titles.	
Penalty, for evading any tax.	111
double tax for evasion.	111
Penalty for failure to stamp.	55, 58, 60
Penalty for omission to stamp remission of.	59
See several objects.	
Penalty for unlawful use of wine spirits.	15
Pension, etc., papers exempt, Schedule A.	89
Perfumery. See Merchandise.	
Perfumery and cosmetics, Schedule B.	106, 108
Perfumery, etc., failure to stamp.	71
Perfumery, etc., monthly declaration.	75
Perfumery, etc., removal of stamps.	73
Perfumery, etc., removal of, unstamped.	74
penalty for failure or falsity of declaration.	76
tax, when in effect.	77, 107
manufacturer defined.	77
imported goods included.	77
imported goods, how taxed.	77
when to be stamped.	107
drawback on exports.	107
Philippines.	xxviii, 127
Playing cards.	xxvi
Pledge of stock, exempt, Schedule A.	80
Pool. See Bowling.	
Pool Room. See Billiard.	
Port certificates, Schedule A.	86
Porter. See Beer.	

(References are to Pages.)

Porto Rico.	xxviii, 126
Post-stamping of papers.	58, 61
Power of attorney, any kind, Schedule A.	88, 104
Profits, corporate interest in, Schedule A.	85
Promissory note, omitting stamp.	55
Promissory notes, tax on.	83, 92
Schedule A.	83
Protest, Schedule A.	89
Protest against tax.	117
Protest of note, bill, etc.	89, 104
Proxy, for company meeting.	88
Schedule A.	88
Public Exhibition. See Exhibition.	

R.

Rebate. See Drawback.	
Record, unstamped papers forbidden.	64
unlawful to, unless stamped.	67
Records and reports, wine producers.	9
Records to be kept by persons liable.	110
Recovery of tax paid.	117
Rectifiers.	xxiii
of cordials, etc.	5, 15
Redemption of unused stamps.	124
Refund. See Drawback.	
Registration unlawful unless stamped.	67
Regulations as to wines, etc.	6
Removal, misuse of mdse. stamps.	73
Removal of unstamped mdse.	74
Repeal of tax law, effect of.	125
Returns or reports to be made by persons liable.	110

S.

Sale, broker's note of, Schedule A.	86
Sale agreement, Schedule A.	81
Sale on board, memo. required, Schedule A.	82

(References are to Pages.)

Sale of mdse. on exchange for actual delivery exempt.....	82
Sale of mdse. on exchange, memo. required.....	82
Sale of products on exchange.....	81, 91
Sale, etc., of stock, taxed.....	80, 89
Schedule A, stamps on documents.....	80
Schedule B, perfumery, etc.....	106, 108
tax on mdse.....	106
Seat in parlor car, Schedule A.....	89
Securities, foreign taxed.....	65
Securities, etc., of domestic governments exempt.....	69
Show. See Exhibition.	
Skin preparations, Schedule B.....	106
Sleeping car berth	89, 105
Special taxes. See Bankers; Billiards; Bowling; Brokers; Circuses; Commercial Brokers; Commission Merchants; Custom-house Brokers; Exhibitions; Pawnbrokers; The- atres; Tobacco.	
Special taxes, in general.....	18-22
when imposed	18
notes	22
Special taxes, other than war revenue.....	xxiii, 22
Special taxes, penalties	43, 45
Special taxes, pro rata for 1916.....	43
Special taxes, tobacco, etc., text.....	39
notes	43
Stamp laws same for Schedules A and B.....	71
Stamp taxes imposed	46
when imposed	46
on what securities and documents.....	46
Schedule A	80
on merchandise, perfumery, etc.....	46
Schedule B	106
penalty for omitting stamp.....	49
penalty for forging, counterfeiting, etc.....	50
cancellation of stamps	53
penalty for failure	53
on promissory note; penalty.....	55
powers and duties of officials.....	56
distribution and sale	56

(References are to Pages.)

Stamp taxes imposed — *Continued.*

omission with intent, penalty.....	58
post-stamping under penalty	58
remission of penalty	59
post-stamping of copy	60
unstamped instrument cannot be recorded.....	64
foreign securities taxed	65
recording and registering of unstamped paper unlawful.	67
validity of paper not lost for want of particular stamp.	68
government securities, U. S., State, local, exempt.....	69
governmental instrumentalities exempt	69
co-operative association securities exempt.....	69
building and loan associations exempt.....	69
stamp law, all apply to all papers and things.....	71
perfumery, cosmetics, etc., penalty for omitting stamps.	71
perfumery, cosmetics, etc., penalty for removing stamps.	73
perfumery, cosmetics, etc., concealing or removing un-	
stamped goods	74
perfumery, cosmetics, etc., for export, exempt under	
regulation	74
Stamp taxes, general imposition of.....	46
laws applicable for collecting.....	110
records to be kept and returns made by person liable..	110
penalty for evasion.	111
Stamp tax, in Holland and England.....	x
Stamp tax on perfume, cosmetics, etc.....	71
Stamps, cancellation of	53, 54, 78
Stamps, distribution of, officially.....	56
Stamps, exchange of old rate for new.....	2
Stamps for wines, etc.....	5
Stamps, forgery and counterfeiting of.....	50, 52
Stamps, omission of, penalty for.....	49
Stamps, official preparation of.....	78
Stamps, omission from promissory note.....	55, 58
Stamps, payment of taxes by.....	46
Stamps, preparation, distribution, sale.....	78
Stamps, sale of	57, 79
Stamps, sale at discount.....	79

(References are to Pages.)

Stamp taxes, Schedule A.	
on securities and documents.....	80
when in effect	80
see under various names.	
Stamps, unused, to be redeemed.....	124
when taxes cease	124
Stamps, use of old former tax.....	2
State and local government functions exempt.....	69
Statutes amended	2, 6 et seq.
Statutes, construction of.....	119
Statutes, other made applicable.....	110, 111
Statutes, Table of Revenue.....	xv
Still wines. See Wines.	
Stills, makers of	xxlii
Stock broker liable for stamp omission.....	81, 90
Stock broker, special tax.....	19
notes	30
Stock, deposited as collateral, exempt.....	80, 89
Stock, issue of, taxed.....	80, 89
Stock, sales, etc., of, taxed.....	80, 89
how taxed, Schedule A.....	80
Succession tax. See Legacy.	
Suit by government. See Collection.	
Sweet wine, producer, use of wine spirits by.....	7

T.

Tax. See the separate titles.	
Tax cannot be enjoined.....	xii, xiii
Taxes, collection of	111
Taxes in effect, when.....	124, 125
all under Act, except beer, to cease, when.....	124, 125
Taxes, rates of. See Table end of book, various titles.	
Taxes, recovery of, wrongfully collected.....	117
Telegraph and telephone, official service exempt.....	85
Telegraph and telephone, tax on.....	84, 95
company to make monthly report.....	84
tax on messages costing 15c.....	84

(References are to Pages.)

Telegraph and telephone, tax on — <i>Continued.</i>	
company to pay the tax.....	85
company to collect from person paying for message....	84
company service exempt	85
government service exempt	85
Telephone and telegraph, tax on.....	84, 95
See Telegraph.	
Theatre, proprietor of, special tax.....	20
according to seating capacity.....	20
theatre defined	20
theatre under lease	20
certain halls excepted	20
notes	36
Tickets, foreign passage	88, 103
parlor car, or sleeper.....	89, 105
Tobacco and snuff.	xxiv
Tobacco dealers and manufacturers, special tax.....	39
when imposed.	39
on basis of annual sales or transfers.....	39
dealers classified.	39
every separate store taxed.	40
manufacturers classified, tobacco	40
manufacturers classified, cigars.	41
manufacturers classified, cigarettes.	42
single tax for manufacturers in all classes.....	42
notes	43
dealers in leaf	39
in any form of tobacco.	40
Tobacco growers not manufacturers.	44
Tobacco manufacturers, special tax.	40
notes	43
Toilet preparation, Schedule B.	106
Transportation, tax on shipments, Schedule A.....	83
bill of lading obligatory.	83
shipper must stamp bill of lading.	83
newspapers pay on monthly report.....	83
newspapers exempt in county.	84
Treasury decisions. See Admin. Rulings.	

(References are to Pages.)

V.

Validity of paper, effect on of not stamping.....	61
not affected by wrong stamp.	68
Vaseline, Schedule B.	106

W.

War Revenue Act, text.....	1-124
War tax, not technical name of Act.....	vii
War tax of 1898, Cf. notes to each section.	
Warehouse beer, how taxed.....	2
Warehouse, bonded customs, entry, Schedule A.....	87
Warehouse receipts, not taxed.	104
Wilson, Woodrow, quoted on taxes.	ix
Wines, liquors, etc., tax, who to affix stamps.....	5
Wines, taxes on.	4
eligible for fortification.	8
fortified, under regulations.	6
fortified, used for liqueurs, etc.....	15
gaugers.	14
still tax on.	4
tax not required on taxed liqueurs.....	5
tax paid by stamps.....	5
wine taxes, notes on.	16
Wine spirits for fortifying, tax on.....	6
for fortifying regulated.	7
fortified, forfeited for excess alcohol.....	7
fortified, for exportation.	11
defined.	7
laws amended.	6, 14
notes on.	16
penalty for unlawful use.	15
recovery of, in process.	13
refund of tax on.	12, 13
redistillation.	13
tax increased.	6, 12, 13

[Total Number of Pages 209.]

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